

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 13.1-603, 13.1-624, 13.1-627, 13.1-649, 13.1-657, 13.1-658, 13.1-664.1,*  
 3 *13.1-665, 13.1-669.1, 13.1-670, 13.1-671.1, 13.1-674, 13.1-685, 13.1-699, 13.1-716 through 13.1-720,*  
 4 *13.1-730, 13.1-732, 13.1-733, 13.1-741.1, 13.1-746.1, 13.1-749.1, 13.1-826, 13.1-841, 13.1-842,*  
 5 *13.1-847.1, 13.1-848, 13.1-852.1, 13.1-865, 13.1-878, 13.1-894, 13.1-895, and 13.1-908.1 of the*  
 6 *Code of Virginia, relating to stock and nonstock corporations.*

7 [H 1878]  
 8 Approved

9 **Be it enacted by the General Assembly of Virginia:**

10 1. That §§ 13.1-603, 13.1-624, 13.1-627, 13.1-649, 13.1-657, 13.1-658, 13.1-664.1, 13.1-665,  
 11 13.1-669.1, 13.1-670, 13.1-671.1, 13.1-674, 13.1-685, 13.1-699, 13.1-716 through 13.1-720, 13.1-730,  
 12 13.1-732, 13.1-733, 13.1-741.1, 13.1-746.1, 13.1-749.1, 13.1-826, 13.1-841, 13.1-842, 13.1-847.1,  
 13 13.1-848, 13.1-852.1, 13.1-865, 13.1-878, 13.1-894, 13.1-895, and 13.1-908.1 of the Code of Virginia  
 14 are amended and reenacted as follows:

15 **§ 13.1-603. Definitions.**

16 In this chapter:

17 "Articles of incorporation" means all documents constituting, at any particular time, the charter of a  
 18 corporation. It includes the original charter issued by the General Assembly, a court or the Commission  
 19 and all amendments including certificates of consolidation, serial designation, reduction, correction, and  
 20 merger, ~~except for a certificate of merger with a subsidiary pursuant to § 13.1-719 that does not include~~  
 21 ~~an amendment to the survivor's articles of incorporation.~~ It excludes articles of share exchange filed by  
 22 an acquiring corporation. When the articles of incorporation have been restated pursuant to any articles  
 23 of restatement, amendment, domestication, or merger, it includes only the restated articles of  
 24 incorporation, including any articles of serial designation, without the accompanying articles of  
 25 restatement, amendment, domestication, or merger.

26 "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to  
 27 issue.

28 "Certificate," when relating to articles filed with the Commission, means the order of the  
 29 Commission that makes the articles effective, together with the articles.

30 "Commission" means the State Corporation Commission of Virginia.

31 "Conspicuous" means so written, displayed, or presented that a reasonable person against whom the  
 32 writing is to operate should have noticed it. For example, text that is italicized, is in boldface,  
 33 contrasting colors, or capitals, or is underlined, is conspicuous.

34 "Corporation" or "domestic corporation" means a corporation authorized by law to issue shares,  
 35 irrespective of the nature of the business to be transacted, organized under this chapter or existing  
 36 pursuant to the laws of the Commonwealth on January 1, 1986, or which, by virtue of articles of  
 37 incorporation, amendment, or merger, has become a domestic corporation of the Commonwealth, even  
 38 though also being a corporation organized under laws other than the laws of the Commonwealth, or  
 39 which has become a domestic corporation of the Commonwealth pursuant to Article 12.1 (§ 13.1-722.2  
 40 et seq.) or Article 12.2 (§ 13.1-722.8 et seq.) of this chapter.

41 "Deliver" or "delivery" means any method of delivery used in conventional commercial practice,  
 42 including delivery by hand, mail, commercial delivery, and, if authorized in accordance with § 13.1-610,  
 43 electronic transmission.

44 "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent  
 45 provided in Article 8.1 (§ 13.1-672.1 et seq.) of Chapter 9 of this title, a foreign corporation.

46 "Disinterested director" means, except with respect to Article 14 (§ 13.1-725 et seq.) of this chapter,  
 47 a director who, at the time action is to be taken under § 13.1-672.4, 13.1-691, 13.1-699 or 13.1-701,  
 48 does not have (i) a financial interest in a matter that is the subject of such action or (ii) a familial,  
 49 financial, professional, employment or other relationship with a person who has a financial interest in  
 50 the matter, either of which would reasonably be expected to affect adversely the objectivity of the  
 51 director when participating in the action, and if the action is to be taken under § 13.1-699 or 13.1-701,  
 52 is also not a party to the proceeding. The presence of one or more of the following circumstances shall  
 53 not by itself prevent a person from being a disinterested director: (i) nomination or election of the  
 54 director to the current board by any person, acting alone or participating with others, who is so  
 55 interested in the matter; (ii) service as a director of another corporation of which an interested person is  
 56 also a director; or (iii) at the time action is to be taken under § 13.1-672.4, status as a named defendant,

57 as a director against whom action is demanded, or as a director who approved the act being challenged.

58 "Distribution" means a direct or indirect transfer of money or other property, except its own shares,  
59 or inurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any  
60 of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase,  
61 redemption, or other acquisition of shares; a distribution of indebtedness of the corporation; or  
62 otherwise. Distribution does not include acquisition by a corporation of its shares from the estate or  
63 personal representative of a deceased shareholder, or any other shareholder, but only to the extent the  
64 acquisition is effected using the proceeds of insurance on the life of such deceased shareholder and the  
65 board of directors approved the policy and the terms of the redemption prior to the shareholder's death.

66 "Document" means (i) any tangible medium on which information is inscribed, and includes any  
67 writing or written instrument, or (ii) an electronic record.

68 "Domestic business trust" has the same meaning as specified in § 13.1-1201.

69 "Domestic limited liability company" has the same meaning as specified in § 13.1-1002.

70 "Domestic limited partnership" has the same meaning as specified in § 50-73.1.

71 "Domestic nonstock corporation" has the same meaning as "domestic corporation" as specified in  
72 § 13.1-803.

73 "Domestic partnership" means an association of two or more persons to carry on as co-owners a  
74 business for profit formed under § 50-73.88, or predecessor law of the Commonwealth, and includes, for  
75 all purposes of the laws of the Commonwealth, a registered limited liability partnership.

76 "Effective date of notice" is defined in § 13.1-610.

77 "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,  
78 electromagnetic, or similar capabilities.

79 "Electronic record" means information that is stored in an electronic or other medium and is  
80 retrievable in paper form through an automated process used in conventional commercial practice, unless  
81 otherwise authorized in accordance with subsection J of § 13.1-610.

82 "Electronic transmission" or "electronically transmitted" means any form or process of  
83 communication, not directly involving the physical transfer of paper or other tangible medium, that (i) is  
84 suitable for the retention, retrieval, and reproduction of information by the recipient, and (ii) is  
85 retrievable in paper form by the recipient through an automated process used in conventional  
86 commercial practice, unless otherwise authorized in accordance with subsection J of § 13.1-610.

87 "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonstock  
88 corporation.

89 "Eligible interests" means interests or memberships.

90 "Employee" includes, unless otherwise provided in the bylaws, an officer but not a director. A  
91 director may accept duties that make him also an employee.

92 "Entity" includes any domestic or foreign corporation; any domestic or foreign nonstock corporation;  
93 any domestic or foreign unincorporated entity; any estate or trust; and any state, the United States and  
94 any foreign government.

95 "Foreign business trust" has the same meaning as specified in § 13.1-1201.

96 "Foreign corporation" means a corporation authorized by law to issue shares, organized under laws  
97 other than the laws of the Commonwealth.

98 "Foreign limited liability company" has the same meaning as specified in § 13.1-1002.

99 "Foreign limited partnership" has the same meaning as specified in § 50-73.1.

100 "Foreign nonstock corporation" has the same meaning as "foreign corporation" as specified in  
101 § 13.1-803.

102 "Foreign partnership" means an association of two or more persons to carry on as co-owners of a  
103 business for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and  
104 includes, for all purposes of the laws of the Commonwealth, a foreign registered limited liability  
105 partnership.

106 "Foreign registered limited liability partnership" has the same meaning as specified in § 50-73.79.

107 "Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed  
108 by an organic law of a jurisdiction other than the Commonwealth.

109 "Government subdivision" includes authority, county, district, and municipality.

110 "Includes" denotes a partial definition.

111 "Individual" means a natural person.

112 "Interest" means either or both of the following rights under the organic law of an unincorporated  
113 entity:

114 1. The right to receive distributions from the entity either in the ordinary course or upon liquidation;  
115 or

116 2. The right to receive notice or vote on issues involving its internal affairs, other than as an agent,  
117 assignee, proxy or person responsible for managing its business and affairs.

118 "Means" denotes an exhaustive definition.

119 "Membership" means the rights of a member in a domestic or foreign nonstock corporation or  
120 limited liability company.

121 "Notice" is defined in § 13.1-610.

122 "Organic document" means the document, if any, that is filed of public record to create an  
123 unincorporated entity. Where an organic document has been amended or restated, the term means the  
124 organic document as last amended or restated.

125 "Organic law" means the statute governing the internal affairs of a domestic or foreign corporation or  
126 eligible entity.

127 "Person" includes an individual and an entity.

128 "Principal office" means the office, in or out of the Commonwealth, where the principal executive  
129 offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or  
130 out of the Commonwealth, so designated by the board of directors. The designation of the principal  
131 office in the most recent annual report filed pursuant to § 13.1-775 shall be conclusive for purposes of  
132 this chapter.

133 "Proceeding" includes civil suit and criminal, administrative, and investigatory action conducted by a  
134 governmental agency.

135 "Public corporation" means a corporation that has shares listed on a national securities exchange or  
136 regularly traded in a market maintained by one or more members of a national or affiliated securities  
137 association.

138 "Record date" means the date established under Article 7 (§ 13.1-638 et seq.) or Article 8 (§ 13.1-654  
139 et seq.) of this chapter on which a corporation determines the identity of its shareholders and their  
140 shareholdings for purposes of this chapter. The determination shall be made as of the close of business  
141 at the principal office of the corporation on the record date unless another time for doing so is specified  
142 when the record date is fixed.

143 "Shareholder" means the person in whose name shares are registered in the records of the  
144 corporation, the beneficial owner of shares to the extent of the rights granted by a nominee certificate on  
145 file with a corporation, or the beneficial owner of shares held in a voting trust.

146 "Shares" means the units into which the proprietary interests in a corporation are divided.

147 "Sign" or "signature" means, with present intent to authenticate or adopt a document: (i) to execute  
148 or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature;  
149 or (ii) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or  
150 process, and includes an electronic signature in an electronic transmission.

151 "State" when referring to a part of the United States, includes a state, commonwealth, and the  
152 District of Columbia, and their agencies and governmental subdivisions; and a territory or insular  
153 possession, and their agencies and governmental subdivisions, of the United States.

154 "Subscriber" means a person who subscribes for shares in a corporation, whether before or after  
155 incorporation.

156 "Subsidiary" means, as to any corporation, any other corporation of which it owns, directly or  
157 indirectly, voting shares entitled to cast a majority of the votes entitled to be cast generally in an  
158 election of directors of such other corporation.

159 "Unincorporated entity" or "domestic unincorporated entity" means a domestic partnership, limited  
160 liability company, limited partnership or business trust.

161 "United States" includes district, authority, bureau, commission, department, and any other agency of  
162 the United States.

163 "Voting group" means all shares of one or more classes or series that under the articles of  
164 incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a  
165 meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote  
166 generally on the matter are for that purpose a single voting group.

167 "Voting power" means the current power to vote in the election of directors.

168 "Writing" or "written" means any information in the form of a document.

169 **§ 13.1-624. Bylaws.**

170 A. The incorporators or board of directors of a corporation shall adopt initial bylaws for the  
171 corporation.

172 B. The bylaws of a corporation may contain any provision that is not inconsistent with law or the  
173 articles of incorporation.

174 C. The bylaws may contain one or ~~both~~ *more* of the following provisions:

175 1. A requirement that if the corporation solicits proxies or consents with respect to an election of  
176 directors, the corporation include in its proxy statement and any form of its proxy or consent, to the  
177 extent and subject to such procedures or conditions as are provided in the bylaws, one or more  
178 individuals nominated by a shareholder in addition to individuals nominated by the board of directors;

179 and

180 2. A requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting  
 181 proxies or consents in connection with an election of directors, to the extent and subject to such  
 182 procedures or conditions as are provided in the bylaws, provided that no bylaw so adopted shall apply to  
 183 elections for which any record date precedes its adoption; and

184 3. *A requirement that a circuit court or a federal district court in the Commonwealth or the*  
 185 *jurisdiction in which the corporation has its principal office shall be the sole and exclusive forum for (i)*  
 186 *any derivative action brought on behalf of the corporation; (ii) any action for breach of duty to the*  
 187 *corporation or the corporation's shareholders by any current or former officer or director of the*  
 188 *corporation; or (iii) any action against the corporation or any current or former officer or director of*  
 189 *the corporation arising pursuant to this chapter or the corporation's articles of incorporation or bylaws.*

190 D. Notwithstanding subdivision B 2 of § 13.1-714, the shareholders in amending, repealing, or  
 191 adopting a bylaw described in subsection C may not limit the authority of the board of directors to  
 192 amend or repeal any condition or procedure set forth in, or to add any procedure or condition to, such a  
 193 bylaw in order to provide for a reasonable, practicable, and orderly process.

194 **§ 13.1-627. General powers.**

195 A. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and  
 196 succession in its corporate name and has the same powers as an individual to do all things necessary or  
 197 convenient to carry out its business and affairs, including, without limitation, power:

198 1. To sue and be sued, complain and defend in its corporate name;

199 2. To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by  
 200 impressing or affixing it or in any other manner reproducing it;

201 3. To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of  
 202 the Commonwealth; ~~for managing the business and regulating the affairs of the corporation;~~

203 4. To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal  
 204 with, real or personal property, or any legal or equitable interest in property, wherever located;

205 5. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its  
 206 property;

207 6. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage,  
 208 lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of,  
 209 any other entity;

210 7. To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and  
 211 other obligations, which may be convertible into or include the option to purchase other securities or  
 212 property of the corporation, and secure any of its obligations by mortgage or pledge of any of its  
 213 property, franchises, or income;

214 8. To lend money, invest and reinvest its funds, and receive and hold real and personal property as  
 215 security for repayment;

216 9. To conduct its business, locate offices, and exercise the powers granted by this chapter within or  
 217 without the Commonwealth;

218 10. To elect directors and appoint officers, employees, and agents of the corporation, define their  
 219 duties, fix their compensation, and lend them money and credit;

220 11. To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus  
 221 plans, share option plans, share purchase plans and benefit and incentive plans for any or all of the  
 222 current or former directors, officers, employees, and agents of the corporation or any of its subsidiaries;

223 12. To make donations for the public welfare or for religious, charitable, scientific, literary or  
 224 educational purposes, except that corporations subject to regulation as to rates by the Commission shall  
 225 not have power to make donations in excess of five percent of net income computed before federal and  
 226 state taxes on income and without taking into account any deduction for gifts;

227 13. To make payments or donations, or do any other act, not inconsistent with this section or any  
 228 other applicable law, that furthers the business and affairs of the corporation;

229 14. To pay compensation, or to pay additional compensation, to any or all directors, officers and  
 230 employees on account of services previously rendered to the corporation, whether or not an agreement to  
 231 pay such compensation was made before such services were rendered;

232 15. To insure for its benefit the life of any of its directors, officers or employees, to insure the life of  
 233 any shareholder for the purpose of acquiring at his death shares owned by such shareholder and to  
 234 continue such insurance after the relationship terminates;

235 16. To cease its corporate activities and surrender its corporate franchise; and

236 17. To have and exercise all powers necessary or convenient to effect any or all of the purposes for  
 237 which the corporation is organized.

238 B. Each corporation other than a public service company, a banking corporation, an insurance  
 239 corporation, a savings institution or a credit union shall have power to enter into partnership agreements,



240 joint ventures or other associations of any kind with any person or persons. The foregoing limitations on  
 241 public service companies, banking corporations, insurance corporations, savings institutions, and credit  
 242 unions shall not apply to the purchase by any such entity of any security of a limited liability company.  
 243 The term "public service company" as used in this subsection shall not apply to railroads, which shall  
 244 have the power given other corporations generally by this subsection. The foregoing limitation on public  
 245 service companies shall not apply to partnership agreements, joint ventures or other associations where  
 246 the purposes of such partnerships, joint ventures or other associations are activities that the public  
 247 service company could lawfully engage in without participation in a partnership, joint venture or  
 248 association and will require an equity investment by the public service company and debt with recourse  
 249 to the public service company of an amount not more than one percent of its net equity as measured at  
 250 the end of the most recent fiscal year so long as all such partnerships, joint ventures and associations  
 251 collectively will require an equity investment by the public service company and debt with recourse to  
 252 the public service company of less than five percent of the net equity of the public service company as  
 253 measured at the end of the most recent fiscal year. Upon application by the public service company, the  
 254 Commission may approve any partnership agreements, joint ventures or other associations that exceed  
 255 the equity investment criteria set forth above. The foregoing limitation on public service companies shall  
 256 not apply to partnership agreements, joint ventures or other associations between telephone companies  
 257 and telephone companies, whether in corporate or other form, or between telephone companies and  
 258 commonly owned affiliates of telephone companies for the purpose of providing domestic cellular radio  
 259 telecommunication service.

260 C. Privileges and powers conferred and restrictions and requirements imposed by other titles of the  
 261 Code on railroads or other public service companies, banking corporations, insurance corporations,  
 262 savings and loan associations, credit unions, industrial loan associations or other special types of  
 263 corporations, shall not be deemed repealed or amended by any provision of this chapter except where  
 264 specifically so provided.

265 D. Each corporation which is deemed a private foundation, as defined in § 509 of the Internal  
 266 Revenue Code, unless its articles of incorporation expressly provide otherwise, shall distribute its income  
 267 and, if necessary, principal, for each taxable year at such time and in such manner as not to subject such  
 268 corporation to tax under § 4942 of the Internal Revenue Code. Such corporation shall not engage in any  
 269 act of self-dealing, as defined in § 4941(d) of the Internal Revenue Code, retain any excess business  
 270 holdings, as defined in § 4943(c) of the Internal Revenue Code, make any investments in such manner  
 271 as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code or make any  
 272 taxable expenditures, as defined in § 4945(d) of the Internal Revenue Code. This subsection shall apply  
 273 to any corporation organized after December 31, 1969, under this chapter or under the Virginia Stock  
 274 Corporation Act (§ 13.1-601 et seq.) enacted by Chapter 428 of the 1956 Acts of General Assembly;  
 275 and to any corporation organized before January 1, 1970, only for its taxable years beginning on and  
 276 after January 1, 1972, unless the exceptions provided in § 508(e)(2)(A) or (B) of the Internal Revenue  
 277 Code shall apply or unless the board of directors of such corporation shall elect that such restrictions as  
 278 contained in this subsection shall not apply by filing written notice of such election with the Attorney  
 279 General and the clerk of the Commission on or before December 31, 1971. Each reference to a section  
 280 of the Internal Revenue Code made in this subsection shall include future amendments to such Code  
 281 sections and corresponding provisions of future internal revenue laws.

282 **§ 13.1-649. Restriction on transfer of shares and other securities.**

283 A. The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between  
 284 shareholders and the corporation may impose restrictions on the transfer or registration of transfer of  
 285 shares of the corporation. A restriction does not affect shares issued before the restriction was adopted  
 286 unless the holders of the shares are parties to the restriction agreement or voted in favor of the  
 287 restriction.

288 B. A restriction on the transfer or registration of ~~transfer~~ of shares is valid and enforceable against  
 289 the holder or a transferee of the holder if the restriction is authorized by this section and its existence is  
 290 noted conspicuously on the front or back of the certificate or is ~~contained~~ in the information statement  
 291 required by subsection B of § 13.1-648. Unless so noted, a restriction is not enforceable against a person  
 292 without knowledge of the restriction.

293 C. A restriction on the transfer or registration of transfer of shares is authorized:

294 1. To maintain the corporation's status when it is dependent on the number or identity of its  
 295 shareholders;

296 2. To preserve exemptions under federal or state securities law; and

297 3. For any other reasonable purpose.

298 D. A restriction on the transfer or registration of transfer of shares may:

299 1. Obligate the shareholder first to offer the corporation or other persons (separately, consecutively,  
 300 or simultaneously) an opportunity to acquire the restricted shares;

301 2. Obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire  
302 the restricted shares;

303 3. Require the corporation, the holders of any class of its shares, or another person to approve the  
304 transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

305 4. Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the  
306 prohibition is not manifestly unreasonable.

307 E. For purposes of this section, "shares" includes any warrants, rights or options to acquire any such  
308 shares or any security or other obligation of the corporation convertible into any such shares or into  
309 warrants, rights or options to acquire any such shares.

310 **§ 13.1-657. Action without meeting.**

311 A. Action required or permitted by this chapter to be adopted or taken at a shareholders' meeting  
312 may be adopted or taken without a meeting if the action is adopted or taken by all the shareholders  
313 entitled to vote on the action, in which case no action by the board of directors shall be required. The  
314 adoption or taking of the action shall be evidenced by one or more written consents describing the  
315 action taken, signed by all the shareholders entitled to vote on the action, bearing the date of each  
316 signature, and delivered to the corporation for inclusion in the minutes or filing with the corporate  
317 records.

318 B. The articles of incorporation may authorize action by shareholders by less than unanimous written  
319 consent provided that the taking of such action is consistent with any requirements that may be set forth  
320 in the corporation's articles of incorporation, the bylaws, or this section. For such action to be valid:

321 1. It shall be an action that this chapter requires or permits to be adopted or taken at a shareholder's  
322 shareholders' meeting;

323 2. The corporation's articles of incorporation shall authorize action by shareholders by less than  
324 unanimous written consent and, if a public corporation at the time of such authorization, the inclusion of  
325 the authorization in the articles of incorporation shall be approved by each voting group entitled to vote  
326 by the greater of:

327 a. The vote of that voting group required by the corporation's articles of incorporation to amend the  
328 articles of incorporation; and

329 b. More than two-thirds of all votes that the voting group is entitled to cast on the amendment;

330 3. Before the holders of more than 10 percent of the outstanding shares of any voting group entitled  
331 to vote on the action to be adopted or taken have executed the written consent, the corporation's  
332 secretary shall have received a copy of the form of written consent setting forth the action to be adopted  
333 or taken; and

334 4. The holders of not less than the minimum number of outstanding shares of each voting group  
335 entitled to vote on the action that would be required to adopt or take the action at a shareholders'  
336 meeting at which all shares of each voting group entitled to vote on the action were present and voted  
337 shall have signed written consents setting forth the action to be adopted or taken.

338 The written consent shall bear the date on which each shareholder signed the consent and be  
339 delivered to the corporation for inclusion in the minutes or filing with the corporate records.

340 C. If not otherwise fixed under § 13.1-656 or 13.1-660 and if prior board action is not required  
341 respecting the action to be adopted or taken without a meeting, the record date for determining the  
342 shareholders entitled to adopt or take action without a meeting shall be the first date on which a signed  
343 written consent is delivered to the corporation. If not otherwise fixed under § 13.1-656 or 13.1-660 and  
344 if prior board action is required respecting the action to be adopted or taken without a meeting, the  
345 record date shall be the close of business on the day the resolution of the board taking such prior action  
346 is adopted. No written consent shall be effective to adopt or take the action referred to therein unless,  
347 within 60 days of the earliest date on which a consent delivered to the corporation as required by this  
348 section was signed, written consents signed by the holders of shares having sufficient votes to adopt or  
349 take the action have been delivered to the corporation. A written consent may be revoked by a writing  
350 to that effect delivered to the corporation before unrevoked written consents sufficient in number to  
351 adopt or take the action are delivered to the corporation.

352 D. A consent signed pursuant to the provisions of this section has the effect of a vote at a meeting  
353 and may be described as such in any document. Unless the articles of incorporation, bylaws or a  
354 resolution of the board of directors provides for a reasonable delay to permit tabulation of written  
355 consents, the action adopted or taken by written consent shall be effective when (i) written consents  
356 signed by the holders of shares having sufficient votes to adopt or take the action are delivered to the  
357 corporation or (ii) if an effective date is specified therein, as of such date provided such consent states  
358 the date of execution by the consenting shareholder.

359 E. *Any person, whether or not then a shareholder, may provide that a consent in writing as a*  
360 *shareholder shall be effective at a future time, including the time when an event occurs, but such future*  
361 *time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to*

362 have been made for purposes of this section at the future time so specified for the consent to be  
 363 effective, provided that (i) the person is a shareholder at such future time and (ii) the person did not  
 364 revoke the consent prior to such future time. Any such consent may be revoked, in the manner provided  
 365 in subsection C, prior to its becoming effective.

366 F. If this chapter requires that notice of a proposed action be given to nonvoting shareholders and  
 367 the action is to be adopted or taken by written consent of the voting shareholders, the corporation shall  
 368 give its nonvoting shareholders written notice of the action not more than 10 days after (i) written  
 369 consents sufficient to adopt or take the action have been delivered to the corporation, or (ii) such later  
 370 date that tabulation of consents is completed pursuant to an authorization under subsection D. The notice  
 371 shall reasonably describe the action adopted or taken and contain or be accompanied by the same  
 372 material that under any provision of this chapter would have been required to be sent to nonvoting  
 373 shareholders in a notice of a meeting at which the proposed action would have been submitted to the  
 374 shareholders for action.

375 F. G. If action is adopted or taken by less than unanimous written consent of the voting shareholders,  
 376 the corporation shall give its nonconsenting voting shareholders written notice of the action not more  
 377 than 10 days after (i) written consents sufficient to adopt or take the action have been delivered to the  
 378 corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization  
 379 under subsection D. The notice shall reasonably describe the action adopted or taken and contain or be  
 380 accompanied by the same material that under any provision of this chapter would have been required to  
 381 be sent to voting shareholders in a notice of a meeting at which the action would have been submitted  
 382 to the shareholders for action.

383 **§ 13.1-658. Notice of meeting.**

384 A. A corporation shall notify shareholders of the date, time, and place of each annual and special  
 385 shareholders' meeting. Such notice shall be given no less than 10 nor more than 60 days before the  
 386 meeting date except that notice of a shareholders' meeting to act on an amendment of the articles of  
 387 incorporation, a plan of merger, share exchange, domestication or entity conversion, a proposed sale of  
 388 assets pursuant to § 13.1-724, or the dissolution of the corporation shall be given not less than 25 nor  
 389 more than 60 days before the meeting date. The notice shall include the record date for determining the  
 390 shareholders entitled to vote at the meeting, if such date is different than the record date for determining  
 391 shareholders entitled to notice of the meeting. Unless this chapter or the articles of incorporation require  
 392 otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting  
 393 as of the record date for determining the shareholders entitled to notice of the meeting.

394 B. Unless the articles of incorporation or this chapter requires otherwise, notice of an annual meeting  
 395 need not state the purpose or purposes for which the meeting is called.

396 C. Notice of a special meeting shall state the purpose or purposes for which the meeting is called.

397 D. If not otherwise fixed under § 13.1-656 or 13.1-660, the record date for determining shareholders  
 398 entitled to notice of and to vote at an annual or special meeting is the day before the effective date of  
 399 the notice to shareholders.

400 E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different  
 401 date, time, or place, notice need not be given if the new date, time, or place is announced at the meeting  
 402 before adjournment. If a new record date for the adjourned meeting is or shall be fixed under  
 403 § 13.1-660, however, *not less than 10 days before the meeting date* notice of the adjourned meeting  
 404 shall be given under this section to shareholders entitled to vote at such adjourned meeting as of the  
 405 record date fixed for notice of such adjourned meeting.

406 F. Notwithstanding the foregoing, no notice of a ~~shareholder's~~ *shareholders'* meeting need be given  
 407 to a shareholder if (i) an annual report and proxy statements for two consecutive annual meetings of  
 408 shareholders or (ii) all, and at least two, checks in payment of dividends or interest on securities during  
 409 a 12-month period, have been sent by first-class United States mail, addressed to the shareholder at the  
 410 shareholder's address as it appears on the share transfer books of the corporation, and returned  
 411 undeliverable. The obligation of the corporation to give notice of shareholders' meetings to any such  
 412 shareholder shall be reinstated once the corporation has received a new address for such shareholder for  
 413 entry on its share transfer books.

414 **§ 13.1-664.1. Voting procedures and inspectors of elections.**

415 A. A public corporation shall, and any other corporation may, appoint one or more inspectors to act  
 416 at a meeting of shareholders and ~~make a written report of the inspector's determinations.~~ The corporation  
 417 may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If  
 418 no inspector or alternate is able to act at a meeting of shareholders, the person presiding at the meeting  
 419 shall appoint one or more inspectors to act at the meeting *in connection with determining voting results.*  
 420 Each inspector, before entering upon the discharge of his duties, shall ~~take and sign an oath~~ *certify in*  
 421 *writing that the inspector will* faithfully ~~to~~ execute the duties of inspector with strict impartiality and  
 422 according to the best of his ability.



423 B. The inspectors shall (i) ascertain the number of shares outstanding and the voting power of each,  
 424 (ii) determine the shares represented at a meeting and the validity of proxies proxy appointments and  
 425 ballots, (iii) count all votes, (iv) determine and retain for a reasonable period a record of the disposition  
 426 of any challenges made to any determination by the inspectors, and (v) certify in a written report their  
 427 determination of the number of shares represented at the meeting and their count of all the votes. The  
 428 inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of  
 429 the duties of the inspectors and may rely on information provided by such persons and other persons,  
 430 including those appointed to tabulate votes, unless the inspectors believe reliance is unwarranted. In any  
 431 court proceeding there shall be a rebuttable presumption that the report of the inspectors is correct.

432 C. No ballot, proxies, or votes, nor any revocations thereof or changes thereto, shall be accepted by  
 433 the inspectors after the closing of the polls unless the circuit court of the city or county where the  
 434 corporation's principal office is located or, if none in this Commonwealth, where its registered office is  
 435 located, upon application by a shareholder, shall determine otherwise.

436 D. In determining the validity of proxies and ballots and in counting the votes performing their  
 437 duties, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with  
 438 those proxies, any may examine (i) the proxy appointment forms and any other information provided in  
 439 accordance with subsection B of § 13.1-663, (ii) any envelope or related writing submitted with those  
 440 appointment forms, (iii) any ballots, (iv) any evidence or other information specified in § 13.1-665, and  
 441 (v) the regular relevant books and records of the corporation, except that the relating to its shareholders  
 442 and their entitlement to vote, including any securities position list provided by a depository clearing  
 443 agency.

444 E. The inspectors also may consider other reliable information for the limited purpose of that they  
 445 believe is relevant and reliable for the purpose of performing any of the duties assigned to them  
 446 pursuant to subsection B, including for the purpose of evaluating inconsistent, incomplete, or erroneous  
 447 information and reconciling proxies and ballots information submitted by or on behalf of banks, brokers,  
 448 their nominees, or similar persons that represent indicates more votes being cast than the holder of a  
 449 proxy is authorized by the record owner shareholder to cast or more votes being cast than the  
 450 shareholder holds of record shareholder is entitled to cast. If the inspectors consider other reliable  
 451 information for the limited purpose permitted herein, the inspectors at the time allowed by this  
 452 subsection, they shall specify in their certification pursuant to clause (v) of report under  
 453 subsection B shall specify the precise information considered by them, including the purpose or  
 454 purposes for which the information was considered, the person or persons from whom they obtained the  
 455 information, when the information was obtained, the means by which the information was obtained, and  
 456 the basis for the inspectors' belief that such information is accurate relevant and reliable.

457 F. Determinations of law by the inspectors shall be subject to de novo review by a court in a  
 458 proceeding under § 13.1-669.1 or other judicial proceeding.

459 G. If authorized by the board of directors, any shareholder vote to be taken by written ballot may be  
 460 satisfied by a ballot submitted by electronic transmission by the shareholder or the shareholder's proxy,  
 461 provided that any such electronic transmission shall either set forth or be submitted with information  
 462 from which it can be determined that the electronic transmission was authorized by the shareholder or  
 463 the shareholder's proxy. A share that is voted by a ballot submitted by electronic transmission is deemed  
 464 present at the meeting of shareholders.

465 **§ 13.1-665. Corporation's acceptance of votes.**

466 A. If the name signed on a vote, ballot, consent, waiver, or proxy appointment corresponds to the  
 467 name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, ballot,  
 468 consent, waiver or proxy appointment and give it effect as the act of the shareholder.

469 B. If the name signed on a vote, ballot, consent, waiver, or proxy appointment does not correspond  
 470 to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept  
 471 the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

472 1. The shareholder is an entity and the name signed purports to be that of an officer, partner, or  
 473 agent of the entity;

474 2. The name signed purports to be that of an administrator, executor, guardian, or conservator  
 475 representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to  
 476 the corporation has been presented with respect to the vote, ballot, consent, waiver, or proxy  
 477 appointment;

478 3. The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and,  
 479 if the corporation requests, evidence acceptable to the corporation that such receiver or trustee has been  
 480 authorized to vote the shares in an order of the court by which such person was appointed has been  
 481 presented with respect to the vote, ballot, consent, waiver, or proxy appointment;

482 4. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the  
 483 shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's



484 authority to sign for the shareholder has been presented with respect to the vote, *ballot*, consent, waiver,  
485 or proxy appointment; or

486 5. Two or more persons are the shareholder as fiduciaries and the name signed purports to be the  
487 name of at least one of the fiduciaries and the person signing appears to be acting on behalf of all the  
488 fiduciaries.

489 C. Notwithstanding the provisions of subdivisions B 2 and B 5, in any case in which the will, trust  
490 agreement, or other instrument under which a fiduciary purports to act contains directions for the voting  
491 of shares in any corporation, or for the execution and delivery of proxies for the voting thereof, such  
492 directions shall be binding upon the fiduciary and upon the corporation if a copy thereof has been  
493 furnished to the corporation.

494 D. The corporation is entitled to reject a vote, *ballot*, consent, waiver, or proxy appointment if the  
495 secretary or other officer or agent authorized to ~~tabulate count~~ votes, acting in good faith, has reasonable  
496 basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the  
497 shareholder.

498 E. ~~The~~ *Neither the corporation and its officer or agent nor the person authorized to count votes,*  
499 *including an inspector under § 13.1-664.1,* who accepts or rejects a vote, *ballot*, consent, waiver, or  
500 proxy appointment in good faith and in accordance with the standards of this section or subsection B of  
501 § 13.1-663 ~~are not~~ *is* liable in damages to the shareholder for the consequences of the acceptance or  
502 rejection.

503 F. Corporate action based on the acceptance or rejection of a vote, *ballot*, consent, waiver, or proxy  
504 appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

505 **§ 13.1-669.1. Judicial determination of corporate officers and review of elections and**  
506 **shareholder votes.**

507 A. ~~Any shareholder, director, or nominee for director aggrieved by an election of directors, after~~  
508 ~~reasonable notice to the corporation and each director whose election is contested, may apply for relief~~  
509 ~~to~~ *Upon application of, or in a proceeding commenced by, a person specified in subsection B,* the  
510 circuit court in the county or city in which the principal office of the corporation is located, or, if none  
511 in the Commonwealth, in the county or city in which its registered office is located. ~~The court shall~~  
512 ~~proceed forthwith on an expedited basis to hear and decide the issues and thereupon to~~ *may* determine  
513 the persons elected or order a new election or grant such other relief as may be equitable. Pending  
514 decision the court may require the production of any information and by order may restrain any person  
515 from exercising the powers of a director if such relief is equitable. In any such application, service of  
516 copies of the application upon the registered agent of the corporation shall be deemed to be service upon  
517 the corporation and upon each director whose election is contested and upon each person, if any,  
518 nominated for election as a director, and the registered agent shall forward immediately a copy of the  
519 application to the corporation and to each director whose election is contested and to each person, if  
520 any, nominated for election as a director, in a postpaid, registered letter addressed to such corporation  
521 and each such person at their post office addresses last known to the registered agent or furnished to the  
522 registered agent by the applicant. The court may make such order respecting further or other notice of  
523 such application as it deems proper under the circumstances.

524 1. *The validity of the election, appointment, removal, or resignation of a director or officer of the*  
525 *corporation;*

526 2. *The right of an individual to hold the office of director or officer of the corporation;*

527 3. *The result or validity of an election or vote by the shareholders of the corporation;*

528 4. *The right of a director to membership on a committee of the board of directors; and*

529 5. *The right of a person to nominate, or an individual to be nominated as, a candidate for election*  
530 *or appointment as a director of the corporation, and any right under a bylaw adopted pursuant to*  
531 *subsection C of § 13.1-624 or any comparable right under any provision of the articles of incorporation,*  
532 *contract, or applicable law.*

533 B. *Any application or proceeding pursuant to subsection A may be filed or commenced by any of the*  
534 *following persons:*

535 1. *The corporation;*

536 2. *A shareholder after prior notice to of the corporation; or;*

537 3. *A director of the corporation itself, may apply for relief to the circuit court in the county or city*  
538 *in which the principal office of the corporation is located, or, if none in the Commonwealth, in the*  
539 *county or city in which its registered office is located, to hear and determine the result of any vote of*  
540 *shareholders upon matters other than the election of directors. The court shall proceed forthwith on an*  
541 *expedited basis to hear and decide the issues and thereupon to determine the validity of any vote of*  
542 *shareholders or order a new vote to be held or grant such other relief as may be equitable. Service of*  
543 *copies of the application upon the registered agent of the corporation shall be deemed to be service upon*  
544 *the corporation, and no other party need be joined in order for the court to adjudicate the results of the*

545 vote. The court may make such order respecting notice of such application as it deems proper under the  
 546 circumstances, an individual claiming the office of director, or a director whose membership on a  
 547 committee of the board of directors is contested, who, in each case, is seeking a determination of his  
 548 right to such office or membership;

549 4. An officer of the corporation or an individual claiming to be an officer of the corporation, in each  
 550 case who is seeking a determination of his right to such office; or

551 5. A person claiming a right covered by subdivision A 5 and who is seeking a determination of such  
 552 right.

553 C. In connection with any application or proceeding pursuant to this section in which it is alleged  
 554 that a proxy or ballot was submitted by the beneficial owner or other authorized person contrary to  
 555 applicable instructions given prior to the closing of the polls, in addition to the information that may be  
 556 considered by inspectors of election pursuant to subsection D of § 13.1-664.1, the court may consider  
 557 other reliable information for the purpose of determining whether the proxy or ballot should be  
 558 considered subsection A, the following shall be named as defendants, unless such person made the  
 559 application or commenced the proceeding:

560 1. The corporation;

561 2. An individual whose right to office or membership on a committee of the board of directors is  
 562 contested;

563 3. Any individual claiming the office or membership at issue; and

564 4. Any person claiming a right covered by subdivision A 5 that is at issue.

565 D. In connection with any application or proceeding under subsection A, service of process may be  
 566 made upon each of the persons specified in subsection C either by:

567 1. Serving on the corporation process addressed to such person in any manner provided by statute of  
 568 the Commonwealth or by rule of the applicable court for service of process on the corporation; or

569 2. Serving on such person process in any manner provided by statute of the Commonwealth or by  
 570 rule of the applicable court.

571 E. When service of process is made upon a person other than the corporation by service upon the  
 572 corporation pursuant to subdivision D 1, the plaintiff and the corporation promptly shall provide written  
 573 notice of such service, together with copies of all process and the application or complaint, to such  
 574 person at the person's last known residence or business address, or as permitted by statute of the  
 575 Commonwealth.

576 F. In connection with any application or proceeding under subsection A, the court shall dispose of  
 577 the application or proceeding on an expedited basis and also may:

578 1. Order such additional or further notice as the court deems proper under the circumstances;

579 2. Order that additional persons be joined as parties to the proceeding if the court determines that  
 580 such joinder is necessary for a just adjudication of matters before the court;

581 3. Order an election or meeting be held in accordance with the provisions of § 13.1-656 or  
 582 otherwise;

583 4. Appoint a master to conduct an election or meeting;

584 5. Enter temporary, preliminary, or permanent injunctive relief;

585 6. Resolve solely for the purposes of the proceeding any legal or factual issues necessary for the  
 586 resolution of any of the matters specified in subsection A, including the right and power of persons  
 587 claiming to own shares to vote at any meeting of the shareholders; and

588 7. Order such relief as the court determines is equitable, just, and proper.

589 G. It shall not be necessary to make shareholders parties to a proceeding or application pursuant to  
 590 this section unless the shareholder is a required defendant under subdivision C 4, relief is sought  
 591 against the shareholder individually, or the court orders joinder pursuant to subdivision F 2.

592 H. Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of  
 593 the court as existed prior to July 1, 2015. An application or proceeding pursuant to this section is not  
 594 the exclusive remedy or proceeding available with respect to the matters specified in subsection A.

595 **§ 13.1-670. Voting trusts.**

596 A. One or more shareholders may create a voting trust, conferring on a trustee or trustees the right to  
 597 vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which  
 598 may include anything consistent with its purpose, and transferring their shares to the trustee or trustees.  
 599 When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of  
 600 all owners of beneficial interests in the trust, together with the number and class of shares each  
 601 transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

602 B. A voting trust becomes effective on the date the first shares subject to the trust are registered in  
 603 the trustee's name. A

604 C. The duration of a voting trust shall be as set forth in the voting trust, except that a voting trust  
 605 that became effective prior to July 1, 2015, is valid for not more than 10 years after its effective date

606 unless extended under subsection C.

607 C. 1. All or some or all of the parties to a *the* voting trust may extend it for additional terms of not  
608 more than 10 years each by signing a written consent to the extension. ~~An~~

609 D. Any consent to an extension is valid for not more than 10 years from the date the first  
610 shareholder signs such a consent pursuant to subsection C signed by less than all of the parties to the  
611 voting trust binds only the parties signing it.

612 2. E. The voting trustee shall deliver copies of ~~the~~ any consent to extension and *the* list of beneficial  
613 owners to the *secretary at the* corporation's principal office. A consent to extension binds only those  
614 parties signing it.

615 **§ 13.1-671.1. Shareholder agreements.**

616 A. An agreement among the shareholders of a corporation that complies with this section is effective  
617 among the shareholders and the corporation, even though it is inconsistent with one or more other  
618 provisions of this chapter in that it:

619 1. Eliminates the board of directors or, subject to the requirements of subsection D of § 13.1-647 and  
620 subsection A of § 13.1-693, one or more officers or restricts the discretion or powers of the board of  
621 directors or one or more officers;

622 2. Governs the authorization or making of distributions, whether or not in proportion to ownership of  
623 shares, subject to the limitations in § 13.1-653;

624 3. Establishes who shall be directors or officers of the corporation, or their terms of office or manner  
625 of selection or removal;

626 4. Governs, in general or in regard to specific matters, the exercise or division of voting power by or  
627 between the shareholders and directors or by or among any of them, including use of weighted voting  
628 rights or director proxies;

629 5. Establishes the terms and conditions of any agreement for the transfer or use of property or the  
630 provision of services between the corporation and any shareholder, director, officer or employee of the  
631 corporation, or among any of them;

632 6. Transfers to one or more shareholders or other persons all or part of the authority to exercise the  
633 corporate powers or to manage the business and affairs of the corporation, including the resolution of  
634 any issue about which there exists a deadlock among directors or shareholders;

635 7. Requires dissolution of the corporation at the request of one or more of the shareholders or upon  
636 the occurrence of a specified event or contingency; or

637 8. Otherwise governs the exercise of the corporate powers or the management of the business and  
638 affairs of the corporation or the relationship among the shareholders, the directors and the corporation,  
639 or among any of them, and is not contrary to public policy.

640 B. An agreement authorized by this section shall be:

641 1. a. Set forth in the articles of incorporation or bylaws and approved by all persons who are  
642 shareholders at the time of the agreement; or

643 b. Set forth in a written agreement that is signed by all persons who are shareholders at the time of  
644 the agreement; *and*

645 2. Subject to amendment only by all persons who are shareholders at the time of the amendment,  
646 unless the agreement provides otherwise; ~~and~~

647 3. ~~Valid for 10 years, unless the agreement provides otherwise.~~

648 C. The existence of an agreement authorized by this section shall be noted conspicuously on the  
649 front or back of each certificate for outstanding shares or on the information statement required by  
650 subsection B of § 13.1-648. If at the time of the agreement the corporation has shares outstanding  
651 represented by certificates, the corporation shall recall the outstanding certificates and issue substitute  
652 certificates that comply with this subsection. The failure to note the existence of the agreement on the  
653 certificate or information statement shall not affect the validity of the agreement or any action taken  
654 pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the  
655 existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed  
656 to have knowledge of the existence of the agreement if its existence is noted on the certificate or  
657 information statement for the shares in compliance with this subsection and, if the shares are not  
658 represented by a certificate, the information statement is delivered to the purchaser at or prior to the  
659 time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection  
660 must be commenced within the earlier of 90 days after discovery of the existence of the agreement or  
661 two years after the time of purchase of the shares.

662 D. An agreement authorized by this section shall cease to be effective when the corporation becomes  
663 a public corporation. If the agreement ceases to be effective for any reason, the board of directors may,  
664 if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt  
665 an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the  
666 agreement and any references to it.



667 E. An agreement authorized by this section that limits the discretion or powers of the board of  
 668 directors shall relieve the directors of, and impose upon the person or persons in whom such discretion  
 669 or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the  
 670 discretion or powers of the directors are limited by the agreement.

671 F. The existence or performance of an agreement authorized by this section shall not be a ground for  
 672 imposing personal liability on any shareholder for the acts or debts of the corporation even if the  
 673 agreement or its performance treats the corporation as if it were a partnership or results in failure to  
 674 observe the corporate formalities otherwise applicable to the matters governed by the agreement.

675 G. Incorporators or subscribers for shares may act as shareholders with respect to an agreement  
 676 authorized by this section if no shares were issued when the agreement was made.

677 H. No action taken pursuant to this section shall change any requirement to file articles or other  
 678 documents with the Commission or affect the rights of any creditors or other third parties.

679 *I. The duration of an agreement authorized by this section shall be as set forth in the agreement,  
 680 except that the duration of an agreement that became effective prior to July 1, 2015, remains 10 years  
 681 unless the agreement provided otherwise or is subsequently amended to provide otherwise.*

682 *J. An agreement among shareholders of a corporation that is consistent with the other provisions of  
 683 this chapter that does not comply with the provisions of this section shall nonetheless be effective among  
 684 the shareholders and the corporation.*

685 **§ 13.1-674. Qualification of directors or for nomination for director.**

686 A. The articles of incorporation or bylaws may prescribe qualifications ~~to be~~ for directors or to be  
 687 nominated as directors.

688 *B. A requirement that is based on a past, current, or prospective action, or on an expression of an  
 689 opinion, by a nominee or director that (i) relates to the discharge of a director's duties and (ii) could  
 690 limit the ability of the nominee or director to discharge his duties as a director is not a permissible  
 691 qualification for a nominee or director under this section. Permissible qualifications for a nominee or  
 692 director under this section include the person's not being or having been subject to specified criminal,  
 693 civil, or regulatory sanctions or not having been removed as a director by judicial action or for cause.*

694 C. A director need not be a resident of this Commonwealth or a shareholder of the corporation  
 695 unless the articles of incorporation or bylaws so prescribe.

696 *D. A qualification for nomination for director that is prescribed before a person's nomination shall  
 697 apply to the person at the time of his nomination. A qualification for nomination for director that is  
 698 prescribed after a person's nomination shall not apply to the person with respect to such nomination.*

699 *E. A qualification for directors that is prescribed before a person's nomination for director may  
 700 provide that it applies (i) only at the start of the director's term or (ii) during that person's term as  
 701 director. A qualification for directors prescribed during a director's term shall not apply to that director  
 702 prior to the end of that director's term.*

703 **§ 13.1-685. Action without meeting of board of directors.**

704 A. Except to the extent that the articles of incorporation or bylaws require that action by the board of  
 705 directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of  
 706 directors may be taken without a meeting if each director signs a consent describing the action to be  
 707 taken and delivers it to the corporation.

708 B. Action taken under this section is effective when the last director signs the consent unless the  
 709 consent specifies a different effective date, in which event the action taken is effective as of the date  
 710 specified therein provided the consent states the date of execution by each director.

711 C. A director's consent may be withdrawn by a revocation signed by the director and delivered to the  
 712 corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

713 *D. Any person, whether or not then a director, may provide that a consent to action as a director  
 714 shall be effective at a future time, including the time when an event occurs, but such future time shall  
 715 not be more than 60 days after such provision is made. Any such consent shall be deemed to have been  
 716 made for purposes of this section at the future time so specified for the consent to be effective, provided  
 717 that (i) the person is a director at such future time and (ii) the person did not revoke the consent prior  
 718 to such future time. Any such consent may be revoked, in the manner provided in subsection C, prior to  
 719 its becoming effective.*

720 *E.* For purposes of this section, a written consent and the signing thereof may be accomplished by  
 721 one or more electronic transmissions.

722 *F.* A consent signed under this section has the effect of action taken at a meeting of the board of  
 723 directors and may be described as such in any document.

724 **§ 13.1-699. Advance for expenses.**

725 A. A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a  
 726 party to a proceeding in advance of final disposition of the proceeding if:

727 ~~1.~~ The director furnishes the corporation a signed written statement of his good faith belief that he

728 has met the standard of conduct described in § 13.1-697; and

729 2. ~~The~~ *the* director furnishes the corporation a signed written undertaking, executed personally or on  
730 his behalf, to repay any funds advanced if the director is not entitled to mandatory indemnification  
731 under § 13.1-698 and it is ultimately determined under § 13.1-700.1 or 13.1-701 that the director has not  
732 met the relevant standard of conduct.

733 B. The undertaking required by ~~subdivision~~ *subsection* A 2 shall be an unlimited general obligation  
734 of the director but need not be secured and may be accepted without reference to financial ability to  
735 make repayment.

736 C. Authorizations of payments under this section shall be made by:

737 1. The board of directors:

738 a. If there are two or more disinterested directors, by a majority vote of all the disinterested directors,  
739 a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a  
740 committee of two or more disinterested directors appointed by such a vote; or

741 b. If there are fewer than two disinterested directors, by the vote necessary for action by the board in  
742 accordance with subsection C of § 13.1-688, in which authorization directors who do not qualify as  
743 disinterested directors may participate; or

744 2. By the shareholders, but shares owned by or voted under the control of a director who at the time  
745 does not qualify as a disinterested director may not be voted on the authorization.

746 **§ 13.1-716. Merger.**

747 A. One or more domestic corporations may merge with one or more domestic or foreign corporations  
748 or eligible entities pursuant to a plan of merger, or two or more foreign corporations or domestic or  
749 foreign eligible entities may merge into a new domestic *or foreign* corporation *or eligible entity* to be  
750 created in the merger ~~in the manner provided in this chapter~~. When a domestic corporation is the  
751 survivor of a merger with a domestic nonstock corporation, it may become, pursuant to subdivision C 5,  
752 a domestic nonstock corporation, provided that the only parties to the merger are domestic corporations  
753 and domestic nonstock corporations.

754 B. A foreign corporation or a foreign eligible entity may be a party to a merger with a domestic  
755 corporation, or may be created pursuant to the terms of the plan of merger, only if the merger is  
756 permitted by the laws under which the foreign corporation or eligible entity is organized or by which it  
757 is governed.

758 C. The plan of merger shall include:

759 1. The name of each domestic or foreign corporation or eligible entity that will merge and the name  
760 of the domestic or foreign corporation or eligible entity that will be the survivor of the merger;

761 2. The terms and conditions of the merger;

762 3. The manner and basis of converting the shares of each merging domestic or foreign corporation  
763 and eligible interests of each merging domestic or foreign eligible entity into shares or other securities,  
764 eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other  
765 property or any combination of the foregoing;

766 4. The manner and basis of converting any rights to acquire the shares of each merging domestic or  
767 foreign corporation and eligible interests of each merging domestic or foreign eligible entity into shares  
768 or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible  
769 interests, cash, or other property or any combination of the foregoing;

770 5. The articles of incorporation of any domestic or foreign corporation or nonstock corporation, or  
771 the organic document of any domestic or foreign unincorporated entity, to be created by the merger, or  
772 if a new domestic or foreign corporation or nonstock corporation or unincorporated entity is not to be  
773 created by the merger, any amendments to the survivor's articles of incorporation or organic document;  
774 and

775 6. Any other provisions required by the laws under which any party to the merger is organized or by  
776 which it is governed, or by the articles of incorporation or organic document of any such party.

777 D. Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the  
778 plan in accordance with subsection L of § 13.1-604.

779 E. The plan of merger may also include a provision that the plan may be amended prior to the  
780 effective date of the certificate of merger, but if the shareholders of a domestic corporation that is a  
781 party to the merger are required ~~or permitted by any provision of this chapter~~ to vote on the plan ~~and~~  
782 ~~amendment of the plan is not conditioned on unanimous shareholder approval~~, the plan ~~must provide~~  
783 ~~that may not be amended~~ subsequent to approval of the plan by such shareholders ~~the plan may not be~~  
784 ~~amended~~ to change *any of the following, unless the amendment is approved by the shareholders*:

785 1. The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire  
786 shares, other securities or eligible interests, cash or other property to be received under the plan by the  
787 shareholders of or owners of eligible interests in any party to the merger;

788 2. The articles of incorporation of any domestic or foreign corporation or nonstock corporation, or

789 the organic document of any unincorporated entity, that will survive or be created as a result of the  
790 merger, except for changes permitted by § 13.1-706; or

791 3. Any of the other terms or conditions of the plan if the change would adversely affect such  
792 shareholders in any material respect.

793 F. 1. One or more domestic corporations may merge pursuant to this section into another domestic  
794 corporation if the articles of incorporation of each of them could lawfully contain all the corporate  
795 powers and purposes of all of them.

796 2. Any corporation authorized by its articles of incorporation to engage in a special kind of business  
797 enumerated in § 13.1-620 may be merged with another corporation authorized by its articles of  
798 incorporation to engage in the same special kind of business, including mergers authorized under  
799 § 6.2-1146, whether or not either or both of such corporations are actually engaged in the transaction of  
800 such business, and the shareholders of the corporations parties to the merger may receive shares of a  
801 corporation not authorized by its articles of incorporation to engage in such special kind of business.

802 **§ 13.1-717. Share exchange.**

803 A. Through a share exchange:

804 1. A domestic corporation may acquire all of the shares of one or more classes or series of shares of  
805 another domestic or foreign corporation, or all of the eligible interests of one or more classes or series  
806 of eligible interests of a domestic or foreign eligible entity, as well as rights to acquire any such shares  
807 or eligible interests, in exchange for shares or other securities, eligible interests, obligations, rights to  
808 acquire shares, other securities or eligible interests, cash, other property or any combination of the  
809 foregoing, pursuant to a plan of share exchange; or

810 2. All of the shares of one or more classes or series of shares of a domestic corporation, as well as  
811 rights to acquire any such shares or eligible interests, may be acquired by another domestic or foreign  
812 corporation or other eligible entity, in exchange for shares or other securities, eligible interests,  
813 obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any  
814 combination of the foregoing, pursuant to a plan of share exchange.

815 B. A foreign corporation or eligible entity may be a party to a share exchange only if the share  
816 exchange is permitted by the laws under which the corporation or eligible entity is organized or by  
817 which it is governed.

818 C. If the organic law of a domestic eligible entity does not provide procedures for the approval of a  
819 share exchange, a plan of share exchange may be adopted and approved, and the share exchange  
820 effectuated, in accordance with the procedures, if any, for a merger.

821 D. The plan of share exchange shall include:

822 1. The name of each domestic or foreign corporation or eligible entity whose shares or eligible  
823 interests will be acquired and the name of the domestic or foreign corporation or other eligible entity  
824 that will acquire those shares or eligible interests;

825 2. The terms and conditions of the share exchange;

826 3. The manner and basis of exchanging shares of a domestic or foreign corporation or eligible  
827 interests in an eligible entity whose shares or eligible interests will be acquired under the share exchange  
828 into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or  
829 eligible interests, cash, other property or any combination of the foregoing;

830 4. The manner and basis for exchanging any rights to acquire shares of a domestic or foreign  
831 corporation or eligible interests in an eligible entity whose shares or eligible interests will be acquired  
832 under the share exchange into shares or other securities, eligible interests, obligations, rights to acquire  
833 shares, other securities or eligible interests, cash, other property or any combination of the foregoing;  
834 and

835 5. Any other provisions required by the laws under which any party to the share exchange is  
836 organized or by the articles of incorporation or organic document of any such party.

837 E. Terms of a plan of share exchange may be made dependent on facts objectively ascertainable  
838 outside the plan in accordance with subsection L of § 13.1-604.

839 F. The plan of share exchange may also include a provision that the plan may be amended prior to  
840 the effective date of the certificate of share exchange, but if the shareholders of a domestic corporation  
841 that is a party to the share exchange are required or ~~permitted~~ *permitted by any provision of this chapter* to vote  
842 on the plan, the plan ~~must provide that may not be amended~~ *may not be amended* subsequent to approval of the plan by such  
843 shareholders ~~the plan may not be amended~~ *the plan may not be amended to change any of the following, unless the amendment is*  
844 *approved by the shareholders:*

845 1. The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire  
846 shares, other securities or eligible interests, cash, or other property or any combination of the foregoing  
847 to be issued by the corporation or to be received under the plan by the shareholders of or owners of  
848 eligible interests in any party to the share exchange; or

849 2. Any of the other terms or conditions of the plan if the change would adversely affect such



850 shareholders in any material respect.

851 G. This section does not limit the power of a domestic corporation to acquire shares of another  
852 domestic or foreign corporation or eligible interests in an eligible entity in a transaction other than a  
853 share exchange.

854 **§ 13.1-718. Action on a plan of merger or share exchange.**

855 A. In the case of a domestic corporation that is a party to a merger or share exchange:

856 1. The plan of merger or share exchange shall be adopted by the board of directors.

857 2. Except as provided in subsections F and G of this section H and in §§ 13.1-719 and 13.1-719.1,  
858 after adopting the plan of merger or share exchange the board of directors shall submit the plan to the  
859 shareholders for their approval. The board of directors shall also transmit to the shareholders a  
860 recommendation that the shareholders approve the plan, unless the board of directors makes a  
861 determination that because of conflicts of interest or other special circumstances it should not make such  
862 a recommendation, in which case the board of directors shall transmit to the shareholders the basis for  
863 that determination.

864 B. The board of directors may condition its submission of the plan of merger or share exchange to  
865 the shareholders on any basis.

866 C. If the plan of merger or share exchange is required to be approved by the shareholders, and if the  
867 approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not  
868 entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The  
869 notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and  
870 shall contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged  
871 into an existing domestic or foreign corporation or eligible entity and its shareholders are to receive  
872 shares or other interests or the right to receive shares or other interests in the surviving corporation or  
873 eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of  
874 incorporation or organic document of that corporation or eligible entity. If the corporation is to be  
875 merged into a domestic or foreign corporation or eligible entity that is to be created pursuant to the  
876 merger and its shareholders are to receive shares or other interests or the right to receive shares or other  
877 interests in the surviving corporation or eligible entity, the notice shall include or be accompanied by a  
878 copy or a summary of the articles of incorporation or organic document of the new domestic or foreign  
879 corporation or eligible entity.

880 D. Unless the articles of incorporation, or the board of directors acting pursuant to subsection B,  
881 require a greater vote, the plan of merger or share exchange to be authorized shall be approved by each  
882 voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by  
883 that voting group. The articles of incorporation may provide for a greater or lesser vote than that  
884 provided for in this subsection or a vote by separate voting groups so long as the vote provided for is  
885 not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the  
886 transaction at a meeting at which a quorum of the voting group exists.

887 E. Separate voting by voting groups is required:

888 1. Except as otherwise provided in the articles of incorporation, on a plan of merger by each class or  
889 series of shares that:

890 a. Is to be converted under the plan of merger into shares, other securities, eligible interests,  
891 obligations, rights to acquire shares, other securities or eligible interests, cash, other property, or any  
892 combination of the foregoing, or is proposed to be eliminated without being converted into any of the  
893 foregoing; or

894 b. Would be entitled to vote as a separate group on a provision in the plan that, if contained in a  
895 proposed amendment to articles of incorporation, would require action by separate voting groups under  
896 § 13.1-708;

897 2. ~~On~~ *Except as otherwise provided in the articles of incorporation, on a plan of share exchange, by*  
898 *each class or series of shares included in the exchange, with each class or series constituting a separate*  
899 *voting group; and*

900 3. *On a plan of merger, if the voting group is entitled under the articles of incorporation to vote as*  
901 *a voting group to approve a plan of merger; and*

902 4. *On a plan of share exchange, if the voting group is entitled under the articles of incorporation to*  
903 *vote as a voting group to approve a plan of share exchange.*

904 F. Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders  
905 of a plan of merger or share exchange is not required if:

906 1. The corporation will survive the merger or is the acquiring corporation in a share exchange;

907 2. Except for amendments permitted by § 13.1-706, its articles of incorporation will not be changed;

908 3. Each shareholder of the corporation whose shares were outstanding immediately before the  
909 effective ~~date~~ *time* of the merger or share exchange will hold the same number of shares, with identical  
910 preferences, limitations, and rights immediately after the effective ~~date~~ *time* of the merger or share

911 exchange; and

912 4. With respect to shares of the surviving corporation in a merger that are entitled to vote  
 913 unconditionally in the election of directors, the number of shares outstanding immediately after the  
 914 merger, plus the number of shares issuable as a result of the merger, either by the conversion of  
 915 securities issued pursuant to the merger or the exercise of options, rights, and warrants issued pursuant  
 916 to the merger, will not exceed by more than ~~20%~~ 20 percent the total number of shares of the surviving  
 917 corporation outstanding immediately before the merger.

918 G. *Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders*  
 919 *of a plan of merger or share exchange is not required if:*

920 1. *The corporation is a public corporation;*

921 2. *The plan of merger or share exchange expressly (i) permits or requires such a merger or share*  
 922 *exchange to be effected under this subsection and (ii) provides that such merger or share exchange be*  
 923 *effected as soon as practicable following the consummation of the offer referred to in subdivision 3 if*  
 924 *such merger or share exchange is effected under this subsection;*

925 3. *A corporation or limited liability company irrevocably accepts for payment shares tendered*  
 926 *pursuant to a tender or exchange offer for any and all of the outstanding shares of a constituent*  
 927 *corporation, as defined in § 13.1-719.1, on the terms provided in such plan of merger or share*  
 928 *exchange that, absent this subsection, would be entitled to vote on the adoption of the plan of merger or*  
 929 *share exchange; however, the offer may exclude shares of the constituent corporation that are owned at*  
 930 *the commencement of the offer by:*

931 a. *The corporation or limited liability company making the offer;*

932 b. *Any person that owns, directly or indirectly, all of the outstanding shares or eligible interests of*  
 933 *the corporation or limited liability company making the offer; or*

934 c. *Any direct or indirect wholly-owned subsidiary of any corporation or limited liability company*  
 935 *described in subdivision a or person described in subdivision b;*

936 4. *Following the acceptance of shares referred to in this subsection, the shares irrevocably accepted*  
 937 *for payment pursuant to the offer and received by the depository prior to expiration of the offer, plus*  
 938 *the shares otherwise owned by the corporation or limited liability company consummating the offer,*  
 939 *equals at least the percentage of the shares, and of each class or series thereof, that, absent this*  
 940 *subsection, would be required to adopt a plan of merger or share exchange under this chapter and by*  
 941 *the articles of incorporation of the constituent corporation;*

942 5. *The corporation or limited liability company accepting the shares referred to in subdivision 3*  
 943 *merges with or into the constituent corporation or acquires all of the outstanding shares of the*  
 944 *constituent corporation pursuant to the plan; and*

945 6. *Each outstanding share of each class or series of stock of the constituent corporation that is the*  
 946 *subject of, and is not irrevocably accepted for payment in, the offer referred to in subdivision 3 is*  
 947 *either:*

948 a. *To be converted in such merger into, or into the right to receive, the same amount and kind of*  
 949 *consideration to be paid for shares of such class or series of stock of such constituent corporation*  
 950 *irrevocably accepted for payment in the offer; or*

951 b. *Exchanged in such share exchange for, or for the right to receive, the same amount and kind of*  
 952 *consideration to be paid for shares of such class or series of stock of such constituent corporation*  
 953 *irrevocably accepted for payment in the offer.*

954 *As used in this subsection:*

955 *"Depository" means an agent appointed in connection with an offer referred to in subdivision 3 by*  
 956 *the corporation or limited liability company consummating the offer.*

957 *"Person" means any individual, corporation, partnership, limited liability company, unincorporated*  
 958 *association, or other entity.*

959 *"Received" means (i) with respect to certificated shares, the physical receipt of a stock certificate*  
 960 *and (ii) with respect to uncertificated shares, (a) the transfer into the depository's account or (b) the*  
 961 *receipt by the depository of an agent's message.*

962 H. If a corporation has not yet issued shares and its articles of incorporation do not otherwise  
 963 provide, its board of directors may adopt and approve a plan of merger or share exchange on behalf of  
 964 the corporation without shareholder action.

965 H. I. If as a result of a merger or share exchange one or more shareholders of a domestic corporation  
 966 would become subject to owner liability for the debts, obligations, or liabilities of any other person or  
 967 entity, approval of the plan of merger or share exchange shall require the execution, by each  
 968 shareholder, of a separate written consent to become subject to such owner liability.

969 **§ 13.1-719. Merger between parent and subsidiary or between subsidiaries.**

970 A. A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation  
 971 that possess at least 90 percent of the voting power of each class and series of the outstanding shares of

972 the subsidiary that have voting power may merge the subsidiary into itself or into another such  
 973 subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or  
 974 shareholders of the subsidiary, unless the articles of incorporation of any of the corporations otherwise  
 975 provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors  
 976 or shareholders is required by the laws under which the subsidiary is organized.

977 *B. A foreign parent corporation that owns shares of a domestic subsidiary corporation that possess*  
 978 *at least 90 percent of the voting power of each class and series of the outstanding shares of the*  
 979 *subsidiary that have voting power may merge the subsidiary into itself or into another domestic or*  
 980 *foreign subsidiary, or merge itself into the subsidiary if permitted by the laws under which any such*  
 981 *foreign parent or subsidiary corporation is organized or by which it is governed, without the approval*  
 982 *of the board of directors or shareholders of the subsidiary, unless the articles of incorporation of any of*  
 983 *the corporations, or in the case of a foreign corporation, its equivalent governing document, otherwise*  
 984 *provide. A foreign corporation may be a party to a merger pursuant to this subsection only if the*  
 985 *merger is permitted by the laws under which the foreign corporation is organized.*

986 *C. If under subsection A or B approval of the merger by the subsidiary's shareholders is not required,*  
 987 *the parent corporation shall, within 10 days after the effective date of the merger, notify each of the*  
 988 *subsidiary's shareholders that the merger has become effective.*

989 ~~C.~~ *D. Except as provided in subsections A and B, and C, a merger between a parent and a*  
 990 *subsidiary shall be governed by the provisions of this article applicable to mergers generally.*

991 ~~D.~~ *E. The articles of incorporation of the survivor shall not be altered or amended by a merger*  
 992 *pursuant to this section, except for amendments permitted by § 13.1-706.*

993 ~~E.~~ *F. Two or more subsidiaries may be merged into a domestic parent corporation pursuant to this*  
 994 *section.*

995 **§ 13.1-719.1. Formation of a holding company.**

996 ~~A.~~ *As used in this section:*

997 "Constituent corporation" means a corporation which, from the incorporation of the holding company  
 998 until consummation of a merger governed by this section, was at all times the sole direct parent of the  
 999 holding company and whose shares are converted into shares of the holding company in such merger.

1000 "Holding company" means a corporation which, from its incorporation until consummation of a  
 1001 merger governed by this section, was at all times a direct ~~wholly-owned~~ wholly owned subsidiary of the  
 1002 constituent corporation and whose shares are issued in such merger in exchange for the shares of the  
 1003 constituent corporation.

1004 "Indirect subsidiary" means a corporation which, from its incorporation until consummation of a  
 1005 merger governed by this section, was at all times a direct ~~wholly-owned~~ wholly owned subsidiary of the  
 1006 holding company.

1007 *B. Unless its articles of incorporation otherwise provide, a constituent corporation may merge an*  
 1008 *indirect subsidiary into itself, or may merge itself into an indirect subsidiary, without the approval of the*  
 1009 *shareholders of the constituent corporation or the board of directors or shareholders of the indirect*  
 1010 *subsidiary, if:*

1011 1. Such constituent corporation and indirect subsidiary are the only parties to the merger;

1012 2. The provisions in the articles of incorporation and bylaws of the constituent corporation and the  
 1013 holding company at the effective ~~date~~ time of the merger are identical as they relate to:

1014 a. The designation, number, and par value of each class and series of shares that are authorized, and  
 1015 the preferences, rights and limitations of each class and series of shares;

1016 b. Any terms of the shares that are dependent upon facts objectively ascertainable outside of the  
 1017 articles of incorporation or that vary among the holders of the same class or series;

1018 c. The preemptive right of the shareholders to acquire unissued shares, provided, however, that if the  
 1019 constituent corporation was formed on or before December 31, 2005, and its articles of incorporation do  
 1020 not deny the preemptive right of its shareholders, and the holding company was formed after December  
 1021 31, 2005, the articles of incorporation of the holding company must provide that its shareholders have  
 1022 the preemptive right to acquire the holding company's unissued shares to the same extent the  
 1023 shareholders of the constituent corporation had a preemptive right to acquire unissued shares of the  
 1024 constituent corporation;

1025 d. The definition, limitation, and regulation of the powers of the corporation, its directors, and  
 1026 shareholders;

1027 e. The management of the business and regulation of the affairs of the corporation; and

1028 f. For purposes of subdivision 2 c of this subsection, shares include any warrants, rights or options to  
 1029 acquire any such shares or any security or other obligation of the corporation convertible into any such  
 1030 shares or into warrants, rights or options to acquire any such shares;

1031 3. Each share or fraction of a share of the constituent corporation outstanding immediately prior to  
 1032 the effective ~~date~~ time of the merger is converted in the merger into a share or equal fraction of a share



1033 of the holding company having the same preferences, rights, and limitations as the share or fraction of a  
 1034 share of the constituent corporation being converted in the merger;

1035 4. Each right to acquire shares of the constituent corporation outstanding immediately prior to the  
 1036 effective ~~date~~ *time* of the merger is converted in the merger into a right to acquire shares of the holding  
 1037 company having the same preferences, rights, and limitations as the right to acquire shares of the  
 1038 constituent corporation being converted in the merger; and

1039 5. The directors of the constituent corporation become or remain the directors of the holding  
 1040 company upon the effective ~~date~~ *time* of the merger.

1041 C. Notwithstanding any provision in this chapter to the contrary, a plan of merger adopted pursuant  
 1042 to this section may include:

1043 1. If the indirect subsidiary is the survivor:

1044 a. An amendment or restatement of the indirect subsidiary's articles of incorporation to change the  
 1045 name of the indirect subsidiary to a name that satisfies the requirements of this chapter; and

1046 b. A provision that the shares of the holding company into which the shares of the constituent  
 1047 corporation are converted in the merger may be represented by the share certificates that previously  
 1048 represented shares of the constituent corporation, if the holding company adopts the former name of the  
 1049 constituent corporation by filing articles of amendment that are effective immediately following  
 1050 consummation of the merger; and

1051 2. If the constituent corporation is the survivor:

1052 a. An amendment or restatement of the constituent corporation's articles of incorporation:

1053 (1) To change the name of the constituent corporation to a name that satisfies the requirements of  
 1054 this chapter;

1055 (2) To delete any existing provisions that authorize the issuance of or relate to multiple classes or  
 1056 series of shares and to add one or more provisions that authorize a new, single class of shares with  
 1057 unlimited voting rights in lieu thereof;

1058 (3) To delete any existing provision that provides for staggering the terms of directors pursuant to  
 1059 § 13.1-678; or

1060 (4) To make any change permitted by § 13.1-706;

1061 b. A provision that one or more of the directors of the constituent corporation immediately prior to  
 1062 the effective ~~date~~ *time* of the merger will no longer be directors of the constituent corporation  
 1063 immediately following the effective ~~date~~ *time* of the merger; and

1064 c. A provision that the shares of the holding company into which the shares of the constituent  
 1065 corporation are converted in the merger may be represented by the share certificates that previously  
 1066 represented shares of the constituent corporation, if the constituent corporation adopts a new name in the  
 1067 merger that is distinguishable upon the records of the Commission and *if the board of directors of the*  
 1068 *holding company, acting pursuant to § 13.1-706,* adopts the former name of the constituent corporation  
 1069 by filing articles of amendment that are effective immediately following consummation of the merger.

1070 D. Articles of merger filed with respect to a merger authorized by this section shall include a  
 1071 statement that the plan of merger did not require approval by the shareholders of the constituent  
 1072 corporation or by the board of directors or shareholders of the indirect subsidiary because the merger  
 1073 was authorized by this section and that the conditions specified in subsection B of ~~this section~~ have been  
 1074 satisfied.

1075 E. Except as provided in this section, a merger governed by this section shall comply with the  
 1076 provisions of this article applicable to mergers generally.

1077 F. From and after the effective ~~date~~ *time* of a merger adopted by a constituent corporation pursuant  
 1078 to this section:

1079 1. To the extent the restrictions of § 13.1-725.1 or § 13.1-728.2 applied to the constituent corporation  
 1080 and its shareholders ~~at the effective date of~~ *immediately prior to* the merger, such restrictions shall apply  
 1081 to the holding company and its shareholders immediately after the effective ~~date~~ *time* of the merger as  
 1082 though it were the constituent corporation, and all shares of the holding company acquired in the merger  
 1083 shall for purposes of §§ 13.1-725.1 and 13.1-728.2 be deemed to have been acquired at the time that the  
 1084 shares of the constituent corporation converted in the merger were acquired, and provided further that:

1085 a. Any shareholder who immediately prior to the effective ~~date~~ *time* of the merger was not an  
 1086 interested shareholder within the meaning of § 13.1-725 shall not solely by reason of the merger become  
 1087 an interested shareholder of the holding company; and

1088 b. Any shares which immediately prior to the effective ~~date~~ *time* of the merger were not interested  
 1089 shares within the meaning of § 13.1-728.1 shall not solely by reason of the merger become interested  
 1090 shares of the holding company; and

1091 2. To the extent a shareholder of the constituent corporation immediately prior to the effective ~~date~~  
 1092 *time* of the merger had standing to institute or maintain a derivative proceeding on behalf of the  
 1093 constituent corporation, consummation of the merger shall not be deemed to limit or extinguish such

1094 standing.

1095 3. To the extent a voting trust authorized by § 13.1-670, a voting agreement authorized by  
 1096 § 13.1-671, a shareholder agreement authorized by § 13.1-671.1, a proxy or any similar agreement or  
 1097 instrument applied to the constituent corporation, its shares or its shareholders at the effective date of  
 1098 *immediately prior to* the merger, such voting trust, voting agreement, shareholder agreement, proxy or  
 1099 other agreement or instrument shall apply to the holding company and its shares and shareholders  
 1100 immediately following consummation of the merger to the same extent that it applied to the constituent  
 1101 corporation and its shares and shareholders immediately prior to consummation of the merger.

1102 **§ 13.1-720. Articles of merger or share exchange.**

1103 A. After a plan of merger or share exchange has been adopted and approved as required by this  
 1104 chapter, articles of merger or share exchange shall be signed on behalf of each party to the merger or  
 1105 share exchange. The articles shall set forth:

1106 1. The plan of merger or share exchange, the names of the parties to the merger or share exchange  
 1107 and, for each party that is a foreign corporation or eligible entity, the name of the state or country under  
 1108 whose law it is incorporated or formed;

1109 2. If the articles of incorporation of a domestic corporation that is the survivor of a merger are  
 1110 amended, or if a new domestic corporation is created as a result of a merger, as an attachment to the  
 1111 articles of merger or share exchange, the amendments to the survivor's articles of incorporation or the  
 1112 articles of incorporation of the new corporation;

1113 3. The date the plan of merger or share exchange was adopted by each domestic corporation that was  
 1114 a party to the merger or share exchange;

1115 4. If the plan of merger or share exchange required approval by the shareholders of a domestic  
 1116 corporation that was a party to the merger or share exchange, either:

1117 a. A statement that the plan was approved by the unanimous consent of the shareholders; or

1118 b. A statement that the plan was submitted to the shareholders by the board of directors in  
 1119 accordance with this chapter, and a statement of:

1120 (1) The designation, number of outstanding shares, and number of votes entitled to be cast by each  
 1121 voting group entitled to vote separately on the plan; and

1122 (2) Either the total number of votes cast for and against the plan by each voting group entitled to  
 1123 vote separately on the plan or the total number of undisputed votes cast for the plan separately by each  
 1124 voting group and a statement that the number cast for the plan by each voting group was sufficient for  
 1125 approval by that voting group;

1126 5. If the plan of merger or share exchange was adopted by the directors without approval by the  
 1127 shareholders of a domestic corporation that was a party to the merger or share exchange, a statement  
 1128 that the plan of merger or share exchange was duly approved by the directors including the reason  
 1129 shareholder approval was not required and, in the case of a merger pursuant to § 13.1-719.1, the  
 1130 additional statements required by subsection D of § 13.1-719.1; and

1131 6. As to each foreign corporation or eligible entity that was a party to the merger or share exchange,  
 1132 a statement that the participation of the foreign corporation or eligible entity was duly authorized as  
 1133 required by the organic law of the corporation or eligible entity.

1134 B. Articles of merger or share exchange shall be filed with the Commission by the survivor of the  
 1135 merger or the acquiring corporation in a share exchange. If the Commission finds that the articles of  
 1136 merger or share exchange comply with the requirements of law and that all required fees have been  
 1137 paid, it shall issue a certificate of merger or share exchange. Articles of merger or share exchange filed  
 1138 under this section may be combined with any filing required under the organic law of any domestic  
 1139 eligible entity involved in the transaction if the combined filing satisfies the requirements of both this  
 1140 section and the other organic law.

1141 C. In the case of a merger pursuant to § 13.1-719 or § 13.1-719.1:

1142 1. The articles shall recite that the merger is being effected pursuant to § 13.1-719 or § 13.1-719.1,  
 1143 *as the case may be; and*

1144 2. The articles need only be ~~executed~~ signed on behalf of the parent corporation; ~~and~~

1145 3. ~~The certificate of merger shall not be deemed a part of the articles of incorporation or the~~  
 1146 ~~constituent corporation, as the case may be.~~

1147 **§ 13.1-730. Right to appraisal.**

1148 A. A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that  
 1149 shareholder's shares, in the event of any of the following corporate actions:

1150 1. Consummation of a merger to which the corporation is a party (i) if shareholder approval is  
 1151 required for the merger by § 13.1-718, ~~except that or would be required but for the provisions of~~  
 1152 ~~subsection G of § 13.1-718; however,~~ appraisal rights shall not be available to any shareholder of the  
 1153 corporation with respect to shares of any class or series that remain outstanding after consummation of  
 1154 the merger; or (ii) if the corporation is a subsidiary and the merger is governed by § 13.1-719;

1155 2. Consummation of a share exchange to which the corporation is a party as the corporation whose  
 1156 shares will be acquired, except that appraisal rights shall not be available to any shareholder of the  
 1157 corporation with respect to any class or series of shares of the corporation that is not exchanged;

1158 3. Consummation of a disposition of assets pursuant to § 13.1-724 if ~~the shareholder is entitled to~~  
 1159 ~~vote on approval is required for~~ the disposition, *except that appraisal rights shall not be available to*  
 1160 *any shareholder of the corporation with respect to shares of any class or series if:*

1161 a. *Under the terms of the corporate action approved by the shareholders there is to be distributed to*  
 1162 *the shareholders in cash the corporation's net assets, in excess of a reasonable amount reserved to meet*  
 1163 *claims of the type described in § 13.1-746 or 13.1-746.1:*

1164 (1) *Within one year after the shareholders' approval of the action; and*

1165 (2) *In accordance with their respective interests determined at the time of distribution; and*

1166 b. *The disposition of assets is not an interested transaction;*

1167 4. An amendment of the articles of incorporation with respect to a class or series of shares that  
 1168 reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the  
 1169 corporation has the obligation or right to repurchase the fractional share so created; ~~or~~

1170 5. Any other amendment to the articles of incorporation, or any other merger, share exchange or  
 1171 disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the  
 1172 board of directors; *or*

1173 6. *Consummation of a domestication in which a domestic corporation becomes a foreign corporation*  
 1174 *if the shareholder does not receive shares in the foreign corporation resulting from the domestication*  
 1175 *that have terms as favorable to the shareholder in all material respects, and represent at least the same*  
 1176 *percentage interest in the total voting rights of the outstanding shares of the domestic corporation, as*  
 1177 *the shares held by the shareholder immediately before the domestication.*

1178 B. Notwithstanding subsection A, the availability of appraisal rights under subdivisions A 1 through  
 1179 A 4 shall be limited in accordance with the following provisions:

1180 1. Appraisal rights shall not be available for the holders of shares of any class or series of shares that  
 1181 is:

1182 a. A covered security under § 18(b)(1)(A) or (B) of the federal Securities Act of 1933, as amended;

1183 b. Traded in an organized market and has at least 2,000 shareholders and a market value of at least  
 1184 \$20 million, exclusive of the value of such shares held by the corporation's subsidiaries, senior  
 1185 executives, directors and beneficial shareholders owning more than 10 percent of such shares; or

1186 c. Issued by an open end management investment company registered with the United States  
 1187 Securities and Exchange Commission under the Investment Company Act of 1940 and may be redeemed  
 1188 at the option of the holder at net asset value.

1189 2. The applicability of subdivision 1 ~~of this subsection~~ shall be determined as of:

1190 a. The record date fixed to determine the shareholders entitled to receive notice of the meeting of  
 1191 shareholders to act upon the corporate action requiring appraisal rights; or

1192 b. The day before the effective date of such corporate action if there is no meeting of shareholders.

1193 3. Subdivision 1 ~~of this subsection~~ shall not be applicable and appraisal rights shall be available  
 1194 pursuant to subsection A for the holders of any class or series of shares who are required by the terms  
 1195 of the corporate action requiring appraisal rights to accept for such shares anything other than cash or  
 1196 shares of any class or any series of shares of any corporation, or any other proprietary interest of any  
 1197 other entity, that satisfies the standards set forth in subdivision 1 ~~of this subsection~~ at the time the  
 1198 corporate action becomes effective.

1199 4. Subdivision 1 ~~of this subsection~~ shall not be applicable and appraisal rights shall be available  
 1200 pursuant to subsection A for the holders of any class or series of shares where the corporate action is an  
 1201 interested transaction.

1202 C. Notwithstanding any other provision of this section, the articles of incorporation as originally filed  
 1203 or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred  
 1204 shares, but any such limitation or elimination contained in an amendment to the articles of incorporation  
 1205 that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to  
 1206 the effective date of such amendment or that the corporation is or may be required to issue or sell  
 1207 thereafter pursuant to any conversion, exchange or other right existing immediately before the effective  
 1208 date of such amendment shall not apply to any corporate action that becomes effective within one year  
 1209 of that date if such action would otherwise afford appraisal rights.

1210 **§ 13.1-732. Notice of appraisal rights.**

1211 A. Where any corporate action specified in subsection A of § 13.1-730 is to be submitted to a vote at  
 1212 a shareholders' meeting, ~~the meeting notice shall state that and~~ the corporation has concluded that  
 1213 shareholders are, ~~are not~~ or may be entitled to assert appraisal rights under this article, *the meeting*  
 1214 *notice shall state the corporation's position as to the availability of appraisal rights.*

1215 ~~If the corporation concludes that appraisal rights are or may be available, a~~ A copy of this article and



1216 a statement of the corporation's position as to the availability of appraisal rights shall accompany the  
 1217 meeting notice sent to those record shareholders *who are or may be* entitled to exercise appraisal rights.

1218 B. In a merger pursuant to § 13.1-719, the parent corporation shall notify in writing all record  
 1219 shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became  
 1220 effective. Such notice shall be sent within 10 days after the corporate action became effective and  
 1221 include the materials described in § 13.1-734.

1222 C. Where any corporate action specified in subsection A of § 13.1-730 is to be approved by written  
 1223 consent of the shareholders pursuant to § 13.1-657:

1224 1. Written notice that appraisal rights are, are not, or may be available must be given to each record  
 1225 shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited  
 1226 and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied  
 1227 by a copy of this article; and

1228 2. Written notice that appraisal rights are, are not, or may be available must be delivered together  
 1229 with the notice to nonconsenting and nonvoting shareholders required by subsections ~~E~~ and F and G of  
 1230 § 13.1-657, may include the materials described in § 13.1-734, and, if the corporation has concluded that  
 1231 appraisal rights are or may be available, must be accompanied by a copy of this article.

1232 D. Where corporate action described in subsection A of § 13.1-730 is proposed, or a merger pursuant  
 1233 to § 13.1-719 is effected, the notice referred to in subsection A or C, if the corporation concludes that  
 1234 appraisal rights are or may be available, and in subsection B shall be accompanied by:

1235 1. The annual financial statements specified in subsection A of § 13.1-774 of the corporation that  
 1236 issued the shares that may be subject to appraisal, which shall be as of a date ending not more than 16  
 1237 months before the date of the notice and shall comply with subsection B of § 13.1-774; provided that, if  
 1238 such annual financial statements are not reasonably available, the corporation shall provide reasonably  
 1239 equivalent financial information; and

1240 2. The latest available quarterly financial statements of such corporation, if any.

1241 E. A public corporation, or a corporation that ceased to be a public corporation as a result of the  
 1242 corporate action specified in subsection A of § 13.1-730, may fulfill its responsibilities under subsection  
 1243 D by delivering the specified financial statements, or otherwise making them available, in any manner  
 1244 permitted by the applicable rules and regulations of the U.S. Securities and Exchange Commission if the  
 1245 corporation was a public corporation as of the date of the specified financial statements.

1246 F. The right to receive the information described in subsection D may be waived in writing by a  
 1247 shareholder before or after the corporate action.

1248 **§ 13.1-733. Notice of intent to demand payment.**

1249 A. If a corporate action specified in subsection A of § 13.1-730 is submitted to a vote at a  
 1250 shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or  
 1251 series of shares:

1252 1. Must deliver to the corporation before the vote is taken written notice of the shareholder's intent to  
 1253 demand payment if the proposed action is effectuated; and

1254 2. Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the  
 1255 proposed action.

1256 B. If a corporate action specified in subsection A of § 13.1-730 is to be approved by ~~less than~~  
 1257 ~~unanimous~~ shareholders by written consent, a shareholder who wishes to assert appraisal rights with  
 1258 respect to any class or series of shares ~~may~~:

1259 1. *Shall deliver to the corporation before the proposed action becomes effective written notice of the*  
 1260 *shareholder's intent to demand payment if the proposed action is effectuated, except that such written*  
 1261 *notice is not required if the notice required by subsection C of § 13.1-732 is given less than 25 days*  
 1262 *prior to the date such proposed action is effectuated; and*

1263 2. *Shall not sign a consent in favor of the proposed action with respect to that class or series of*  
 1264 *shares.*

1265 C. A shareholder who fails to satisfy the requirements of subsection A or ~~subsection~~ B is not entitled  
 1266 to payment under this article.

1267 **§ 13.1-741.1. Limitations on other remedies for fundamental transactions.**

1268 A. Except for action taken before the Commission pursuant to § 13.1-614 or as provided in  
 1269 subsection B, the legality of a proposed or completed corporate action described in subsection A of  
 1270 § 13.1-730 may not be contested, nor may the corporate action be enjoined, set aside or rescinded, in a  
 1271 legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

1272 B. Subsection A does not apply to a corporate action that:

1273 1. Was not authorized and approved in accordance with the applicable provisions of:

1274 a. Article 11 (§ 13.1-705 et seq.), Article 12 (§ 13.1-715.1 et seq.), or Article 13 (§ 13.1-723 et seq.);

1275 b. The articles of incorporation or bylaws; or

1276 c. The resolutions of the board of directors authorizing the corporate action;

1277 2. Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact  
 1278 necessary to make statements made, in light of the circumstances in which they were made, not  
 1279 misleading;

1280 3. Is an interested transaction, unless it has been authorized, approved or ratified by the board of  
 1281 directors in the same manner as is provided in subsection B of § 13.1-691 and has been authorized,  
 1282 approved or ratified by the shareholders in the same manner as is provided in subsection C of  
 1283 § 13.1-691 as if the interested transaction were a director's conflict of interests transaction; or

1284 4. Is adopted or taken by less than unanimous consent of the voting shareholders pursuant to  
 1285 § 13.1-657 if:

1286 a. The challenge to the corporate action is brought by a shareholder who did not consent ~~and as to~~  
 1287 ~~whom notice of the adoption or taking of~~ to the corporate action was not effective at least 10 days  
 1288 before the corporate action was effected; and

1289 b. The proceeding challenging the corporate action is commenced within 10 days after notice of the  
 1290 adoption or taking of the corporate action is effective as to the shareholder bringing the proceeding.

1291 C. Any remedial action with respect to corporate action described in subsection A of § 13.1-730 shall  
 1292 not limit the scope of, or be inconsistent with, any provision of § 13.1-614.

1293 **§ 13.1-746.1. Other claims against dissolved corporation.**

1294 A. A dissolved corporation may also (i) deliver notice of its dissolution to any known claimant with  
 1295 a liability or claim that is ~~excluded from the definition of a claim in pursuant to~~ subsection D of  
 1296 ~~§ 13.1-746 is not treated as a claim for purposes of~~ § 13.1-746 and (ii) publish notice of its dissolution  
 1297 one time in a newspaper of general circulation in the city or county where the dissolved corporation's  
 1298 principal office, or, if none in the Commonwealth, its registered office, is or was last located. The notice  
 1299 of dissolution shall request that persons with claims against the dissolved corporation present them in  
 1300 accordance with the notice.

1301 B. The notice shall:

1302 1. Describe the information that is required to be included in a claim and provide a mailing address  
 1303 where the claim may be sent; and

1304 2. State that a claim against the dissolved corporation will be barred unless a proceeding to enforce  
 1305 the claim is commenced prior to the earlier of the expiration of any applicable statute of limitations or  
 1306 three years after the date of delivery of notice to the claimant, or the date of publication of the notice,  
 1307 as appropriate.

1308 C. If the dissolved corporation provides notice of its dissolution in accordance with this section, the  
 1309 claim of each of the following claimants is barred unless the claimant commences a proceeding to  
 1310 enforce the claim against the dissolved corporation prior to the earlier of the expiration of any applicable  
 1311 statute of limitations or three years after the date on which notice was delivered to the claimant or  
 1312 published, as appropriate:

1313 1. A claimant who was not given written notice under § 13.1-746;

1314 2. A claimant whose claim was timely sent to the dissolved corporation but not acted on; *and*

1315 3. A claimant whose claim ~~does not meet the definition of a claim in pursuant to~~ subsection D of  
 1316 ~~§ 13.1-746 is not treated as a claim for purposes of~~ § 13.1-746.

1317 D. A claim that is not barred by subsection C of § 13.1-746 or subsection C of ~~§ 13.1-746.1 this~~  
 1318 ~~section~~ may be enforced:

1319 1. Against the dissolved corporation, to the extent of its undistributed assets; or

1320 2. Except as provided in subsection D of § 13.1-746.2, if the assets have been distributed in  
 1321 liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata  
 1322 share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less,  
 1323 but a shareholder's total liability for all claims under this section may not exceed the total amount of  
 1324 assets distributed to the shareholder.

1325 **§ 13.1-749.1. Election to purchase in lieu of dissolution.**

1326 A. Unless otherwise provided in the articles of incorporation, in a proceeding under subdivision A 1  
 1327 of § 13.1-747 to dissolve a corporation, the corporation may elect or, if it fails to elect, one or more  
 1328 shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of  
 1329 the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is  
 1330 equitable to set aside or modify the election.

1331 B. An election to purchase pursuant to this section may be filed with the court at any time within 90  
 1332 days after the filing of the petition under subdivision A 1 of § 13.1-747 or at such later time as the  
 1333 court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the  
 1334 corporation shall, within 10 days thereafter, give written notice to all shareholders, other than the  
 1335 petitioner. The notice shall state the name and number of shares owned by the petitioner and the name  
 1336 and number of shares owned by each electing shareholder and shall advise the recipients of their right to  
 1337 join in the election to purchase shares in accordance with this section. Shareholders who wish to

1338 participate shall file notice of their intention to join in the purchase no later than 30 days after the  
 1339 effective date of the notice to them. All shareholders who have filed an election or notice of their  
 1340 intention to participate in the election to purchase thereby become parties to the proceeding and shall  
 1341 participate in the purchase in proportion to their ownership of shares as of the date the first election was  
 1342 filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the  
 1343 corporation or one or more shareholders, the proceeding under subdivision A 1 of § 13.1-747 may not  
 1344 be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of the  
 1345 petitioner's shares, unless the court determines that it would be equitable to the corporation and the  
 1346 shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other  
 1347 disposition.

1348 C. If, within 60 days of the filing of the first election, the parties reach agreement as to the fair  
 1349 value and terms of purchase of the petitioner's shares, the court shall enter an order directing the  
 1350 purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

1351 D. If the parties are unable to reach an agreement as provided for in subsection C, the court, upon  
 1352 application of any party, shall stay the proceedings under subdivision A 1 of § 13.1-747 and determine  
 1353 the fair value of the petitioner's shares as of the day before the date on which the petition under  
 1354 subdivision A 1 of § 13.1-747 was filed or as of such other date as the court deems appropriate under  
 1355 the circumstances. *The determination of fair value shall include consideration of all relevant facts and*  
 1356 *circumstances, including, unless the court determines it would be unjust or inequitable to do so, (i) the*  
 1357 *petitioner's minority status, (ii) the marketability of the petitioner's shares, (iii) the relevant terms of any*  
 1358 *shareholders' agreement, and (iv) if the court finds that the value of the corporation has been*  
 1359 *diminished by the wrongful conduct of controlling shareholders, the petitioner's proportionate claim for*  
 1360 *any compensable corporate injury. In determining the fair value, the court may, in its discretion, select*  
 1361 *an appraiser to appraise the fair value of the petitioner's shares and shall assess the cost of any such*  
 1362 *appraisal to the parties, to the corporation, or both, as the equities may appear to the court.*

1363 E. Upon determining the fair value of the shares, the court shall enter an order directing the purchase  
 1364 upon such terms and conditions as the court deems appropriate, which may include payment of the  
 1365 purchase price in installments, where necessary in the interests of equity, provision for security to assure  
 1366 payment of the purchase price and any additional costs, fees and expenses as may have been awarded,  
 1367 and, if the shares are to be purchased by shareholders, the allocation of shares among them. In  
 1368 allocating petitioner's shares among holders of different classes of shares, the court should attempt to  
 1369 preserve the existing distribution of voting rights among holders of different classes insofar as  
 1370 practicable and may direct that holders of a specific class or classes shall not participate in the purchase.  
 1371 Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the  
 1372 court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or  
 1373 otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning  
 1374 shareholder had probable grounds for relief under subdivision A 1 b or d of § 13.1-747, it may award to  
 1375 the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by the  
 1376 shareholder.

1377 F. Upon entry of an order under subsection C or E, the court shall dismiss the petition to dissolve  
 1378 the corporation under subdivision A 1 of § 13.1-747 and the petitioning shareholder shall no longer have  
 1379 any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded  
 1380 to him by the order of the court, which shall be enforceable in the same manner as any other judgment.

1381 G. The purchase ordered pursuant to subsection E shall be made within 10 days after the date the  
 1382 order becomes final.

1383 H. Any payment by the corporation pursuant to an order under subsection C or E, other than an  
 1384 award of fees and expenses pursuant to subsection E, is subject to the provisions of § 13.1-653.

1385 **§ 13.1-826. General powers.**

1386 A. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and  
 1387 succession in its corporate name and has the same powers as an individual to do all things necessary or  
 1388 convenient to carry out its business and affairs, including, without limitation, power:

- 1389 1. To sue and be sued, complain and defend, in its corporate name;
- 1390 2. To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by  
 1391 impressing or affixing it or in any other manner reproducing it;
- 1392 3. To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal  
 1393 with, real or personal property, or any legal or equitable interest in property, wherever located;
- 1394 4. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its  
 1395 property;
- 1396 5. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage,  
 1397 lend, pledge, or otherwise dispose of, and deal with shares or other interests in, or obligations of, any  
 1398 other entity;



1399 6. To make contracts and guarantees, incur liabilities, borrow money, and issue its notes, bonds, and  
 1400 other obligations, which may be convertible into, or include the option to purchase, other securities or  
 1401 property of the corporation, and secure any of its obligations by mortgage or pledge of any of its  
 1402 property, franchises, or income;

1403 7. To lend money, invest and reinvest its funds, and receive and hold real and personal property as  
 1404 security for repayment;

1405 8. To transact its business, locate offices, and exercise the powers granted by this *Aet chapter* within  
 1406 or without the Commonwealth;

1407 9. To elect directors and appoint officers, employees, and agents of the corporation, define their  
 1408 duties, fix their compensation, and lend them money and credit;

1409 10. To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of  
 1410 the Commonwealth; ~~for managing the business and regulating the affairs of the corporation;~~

1411 11. To make donations for the public welfare or for religious, charitable, scientific, literary or  
 1412 educational purposes;

1413 12. To pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans,  
 1414 and benefit and incentive plans for any or all of the current or former directors, officers, employees, and  
 1415 agents of the corporation or any of its subsidiaries;

1416 13. To insure for its benefit the life of any of its directors, officers, or employees and to continue  
 1417 such insurance after the relationship terminates;

1418 14. To make payments or donations or do any other act not inconsistent with this section or any  
 1419 other applicable law that furthers the business and affairs of the corporation;

1420 15. To pay compensation or to pay additional compensation to any or all directors, officers, and  
 1421 employees on account of services previously rendered to the corporation, whether or not an agreement to  
 1422 pay such compensation was made before such services were rendered;

1423 16. To cease its corporate activities and surrender its corporate franchise; and

1424 17. To have and exercise all powers necessary or convenient to effect any or all of the purposes for  
 1425 which the corporation is organized.

1426 B. Each corporation other than a banking corporation, an insurance corporation, a savings institution  
 1427 or a credit union shall have power to enter into partnership agreements, joint ventures or other  
 1428 associations of any kind with any person or persons. The foregoing limitations on banking corporations,  
 1429 insurance corporations, savings institutions, and credit unions shall not apply to the purchase by any  
 1430 such entity of any security of a limited liability company.

1431 C. Privileges and powers conferred and restrictions and requirements imposed by other titles of the  
 1432 Code on railroads or other public service companies, banking corporations, insurance corporations,  
 1433 savings institutions, credit unions, industrial loan associations or other special types of corporations shall  
 1434 not be deemed repealed or amended by any provision of this *Aet chapter* except where specifically so  
 1435 provided.

1436 D. Each corporation which is deemed a private foundation, as defined in § 509 of the Internal  
 1437 Revenue Code, unless its articles of incorporation expressly provide otherwise, shall distribute its income  
 1438 and, if necessary, principal, for each taxable year at such time and in such manner as not to subject such  
 1439 corporation to tax under § 4942 of the Internal Revenue Code. Such corporation shall not engage in any  
 1440 act of self-dealing, as defined in § 4941(d) of the Internal Revenue Code, retain any excess business  
 1441 holdings, as defined in § 4943(c) of the Internal Revenue Code, make any investments in such manner  
 1442 as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code, or make any  
 1443 taxable expenditures, as defined in § 4945(d) of the Internal Revenue Code. This subsection shall apply  
 1444 to any corporation organized after December 31, 1969, under this *Aet chapter* or under the Virginia  
 1445 Nonstock Corporation Act (§ 13.1-201 et seq.) enacted by Chapter 428 of the Acts of Assembly of  
 1446 1956; and to any corporation organized before January 1, 1970, only for its taxable years beginning on  
 1447 and after January 1, 1972, unless the exceptions provided in § 508(e)(2)(B) or (C) of the Internal  
 1448 Revenue Code shall apply or unless the board of directors of such corporation shall elect that such  
 1449 restrictions as contained in this subsection shall not apply by filing written notice of such election with  
 1450 the Attorney General and the clerk of the Commission on or before December 31, 1971. Each reference  
 1451 to a section of the Internal Revenue Code made in this subsection shall include future amendments to  
 1452 such Code sections and corresponding provisions of future internal revenue laws.

1453 **§ 13.1-841. Corporate action without meeting.**

1454 A. 1. Corporate action required or permitted by this *Aet chapter* to be taken at a meeting of the  
 1455 members may be taken without a meeting and without prior notice if the corporate action is taken by all  
 1456 members entitled to vote on the corporate action, in which case no corporate action by the board of  
 1457 directors shall be required.

1458 2. Notwithstanding subdivision 1 of this subsection, if so provided in the articles of incorporation of  
 1459 a corporation, corporate action required or permitted by this *Aet chapter* to be taken at a meeting of

1460 members may be taken without a meeting and without prior notice, if the corporate action is taken by  
 1461 members who would be entitled to vote at a meeting of members having voting power to cast not fewer  
 1462 than the minimum number (or numbers, in the case of voting by voting groups) of votes that would be  
 1463 necessary to authorize or take the corporate action at a meeting at which all members entitled to vote  
 1464 thereon were present and voted.

1465 3. The corporate action shall be evidenced by one or more written consents bearing the date of  
 1466 execution and describing the corporate action taken, signed by the members entitled to take such  
 1467 corporate action without a meeting and delivered to the secretary of the corporation for inclusion in the  
 1468 minutes or filing with the corporate records. Any corporate action taken by written consent shall be  
 1469 effective according to its terms when the requisite consents are in possession of the corporation.  
 1470 Corporate action taken under this section is effective as of the date specified therein, provided the  
 1471 consent states the date of execution by each member.

1472 B. If not otherwise determined under § 13.1-840 or 13.1-844, the record date for determining  
 1473 members entitled to take corporate action without a meeting is the date the first member signs the  
 1474 consent under subsection A. No written consent shall be effective to take the corporate action referred to  
 1475 therein unless, within 120 days after the earliest date of execution appearing on a consent delivered to  
 1476 the corporation in the manner required by this section, written consents sufficient in number to take  
 1477 corporate action are received by the corporation. A written consent may be revoked by a writing to that  
 1478 effect received by the corporation prior to receipt by the corporation of unrevoked written consents  
 1479 sufficient in number to take corporate action.

1480 C. For purposes of this section, written consent may be accomplished by one or more electronic  
 1481 transmissions, as defined in § 13.1-803. A consent signed under this section has the effect of a vote of  
 1482 voting members at a meeting and may be described as such in any document filed with the Commission  
 1483 under this ~~Aet~~ chapter.

1484 D. If corporate action is to be taken under this section by fewer than all of the members entitled to  
 1485 vote on the action, the corporation shall give written notice of the proposed corporate action, not less  
 1486 than five days before the action is taken, to all persons who are members on the record date and who  
 1487 are entitled to vote on the matter. The notice shall contain or be accompanied by the same material that  
 1488 under this ~~Aet~~ chapter would have been required to be sent to members in a notice of meeting at which  
 1489 the corporate action would have been submitted to the members for a vote.

1490 E. If this ~~Aet~~ chapter requires that notice of proposed corporate action be given to nonvoting  
 1491 members and the corporate action is to be taken by consent of the voting members, the corporation shall  
 1492 give its nonvoting members written notice of the proposed action not less than five days before it is  
 1493 taken. The notice shall contain or be accompanied by the same material that under this ~~Aet~~ chapter  
 1494 would have been required to be sent to nonvoting members in a notice of meeting at which the  
 1495 corporate action would have been submitted to the members for a vote.

1496 F. *Any person, whether or not then a member, may provide that a consent in writing as a member*  
 1497 *shall be effective at a future time, including the time when an event occurs, but such future time shall*  
 1498 *not be more than 60 days after such provision is made. Any such consent shall be deemed to have been*  
 1499 *made for purposes of this section at the future time so specified for the consent to be effective, provided*  
 1500 *that (i) the person is a member at such future time and (ii) the person did not revoke the consent prior*  
 1501 *to such future time.*

1502 **§ 13.1-842. Notice of meeting.**

1503 A. 1. A corporation shall notify members of the date, time and place of each annual and special  
 1504 members' meeting. Such notice shall be given no less than 10 nor more than 60 days before the meeting  
 1505 date except that notice of a members' meeting to act on an amendment of the articles of incorporation, a  
 1506 plan of merger, domestication, a proposed sale of assets pursuant to § 13.1-900, or the dissolution of the  
 1507 corporation shall be given not less than 25 nor more than 60 days before the meeting date. Unless this  
 1508 ~~Aet~~ chapter or the articles of incorporation require otherwise, the corporation is required to give notice  
 1509 only to members entitled to vote at the meeting.

1510 2. In lieu of delivering notice as specified in subdivision A 1, the corporation may publish such  
 1511 notice at least once a week for two successive calendar weeks in a newspaper published in the city or  
 1512 county in which the registered office is located, or having a general circulation therein, the first  
 1513 publication to be not more than 60 days, and the second not less than seven days before the date of the  
 1514 meeting.

1515 B. Unless this ~~Aet~~ chapter or the articles of incorporation require otherwise, notice of an annual  
 1516 meeting need not state the purpose or purposes for which the meeting is called.

1517 C. Notice of a special meeting shall state the purpose or purposes for which the meeting is called.

1518 D. If not otherwise fixed under § 13.1-840 or 13.1-844, the record date for determining members  
 1519 entitled to notice of and to vote at an annual or special meeting is the day before the effective date of  
 1520 the notice to members.

1521 E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different  
 1522 date, time, or place, notice need not be given if the new date, time, or place is announced at the meeting  
 1523 before adjournment. If a new record date for the adjourned meeting is or shall be fixed under  
 1524 § 13.1-844, however, *not less than 10 days before the meeting date* notice of the adjourned meeting  
 1525 shall be given under this section to persons who are members as of the new record date.

1526 **§ 13.1-847.1. Voting procedures and inspectors of elections.**

1527 A. A corporation may appoint one or more inspectors to act at a meeting of members ~~and make a~~  
 1528 ~~written report of the inspector's determinations. The corporation may designate one or more persons as~~  
 1529 ~~alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at~~  
 1530 ~~a meeting of members, the person presiding at the meeting shall appoint one or more inspectors to act at~~  
 1531 ~~the meeting in connection with determining voting results.~~ Each inspector, before entering upon the  
 1532 discharge of his duties, shall ~~take and sign an oath~~ *certify in writing that the inspector will faithfully to*  
 1533 *execute the duties of inspector with strict impartiality and according to the best of his ability.*

1534 B. The inspectors shall (i) ascertain the number of members and the voting power of each, (ii)  
 1535 determine the number of the members represented at a meeting and the validity of ~~proxies~~ *proxy*  
 1536 *appointments* and ballots, (iii) count all votes, (iv) determine, and retain for a reasonable period a record  
 1537 of the disposition of, any challenges made to any determination by the inspectors, and (v) certify their  
 1538 determination of the number of members represented at the meeting and their count of ~~all~~ *the* votes. The  
 1539 inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of  
 1540 their duties, *and may rely on information provided by such persons and other persons, including those*  
 1541 *appointed to tabulate votes, unless the inspectors believe reliance is unwarranted.* In any court  
 1542 proceeding there shall be a rebuttable presumption that the report of the inspectors is correct.

1543 C. No ballot, proxies, or votes, nor any revocations thereof or changes thereto, shall be accepted by  
 1544 the inspectors after the closing of the polls unless the circuit court of the city or county where the  
 1545 corporation's principal office is located or, if none in the Commonwealth, where its registered office is  
 1546 located, upon application by a member, shall determine otherwise.

1547 D. In determining the validity of proxies and ballots and in counting the votes, the inspectors shall  
 1548 be limited to an examination of the proxies, any envelopes submitted with those proxies, any  
 1549 information provided in accordance with subsection B of § 13.1-847, ballots, and the regular books and  
 1550 records of the corporation. If the inspectors consider other reliable information for the limited purpose  
 1551 permitted herein, they shall specify, at the time that they make their certification pursuant to clause (v)  
 1552 of subsection B, the precise information that they considered, including the person or persons from  
 1553 whom they obtained the information, when the information was obtained, the means by which the  
 1554 information was obtained, and the basis for their belief that such information is accurate and reliable.

1555 E. If authorized by the board of directors, any member vote to be taken by written ballot may be  
 1556 satisfied by a ballot submitted by electronic transmission by the member or the member's proxy,  
 1557 provided that any such electronic transmission shall either set forth or be submitted with information  
 1558 from which it may be determined that the electronic transmission was authorized by the member or the  
 1559 member's proxy. *A member who votes by a ballot submitted by electronic transmission is deemed*  
 1560 *present at the meeting of members.*

1561 **§ 13.1-848. Corporation's acceptance of votes.**

1562 A. If the name signed on a vote, *ballot*, consent, waiver, or proxy appointment corresponds to the  
 1563 name of a member, the corporation, if acting in good faith, is entitled to accept the vote, *ballot*, consent,  
 1564 waiver, or proxy appointment and give it effect as the act of the member.

1565 B. If the name signed on a vote, *ballot*, consent, waiver, or proxy appointment does not correspond  
 1566 to the name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the  
 1567 vote, *ballot*, consent, waiver, or proxy appointment and give it effect as the act of the member if:

1568 1. The member is an entity and the name signed purports to be that of an officer, partner or agent of  
 1569 the entity;

1570 2. The name signed purports to be that of an administrator, executor, guardian, or conservator  
 1571 representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the  
 1572 corporation has been presented with respect to the vote, *ballot*, consent, waiver, or proxy appointment;

1573 3. The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if  
 1574 the corporation requests, evidence acceptable to the corporation that such receiver or trustee has been  
 1575 authorized to vote the membership interest in an order of the court by which such person was appointed  
 1576 has been presented with respect to the vote, *ballot*, consent, waiver, or proxy appointment;

1577 4. The name signed purports to be that of a beneficial owner or attorney-in-fact of the member and,  
 1578 if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for  
 1579 the member has been presented with respect to the vote, *ballot*, consent, waiver, or proxy appointment;  
 1580 or

1581 5. Two or more persons are the member as fiduciaries and the name signed purports to be the name



1582 of at least one of the fiduciaries and the person signing appears to be acting on behalf of all the  
1583 fiduciaries.

1584 C. Notwithstanding the provisions of subdivisions B 2 and 5, in any case in which the will, trust  
1585 agreement, or other instrument under which a fiduciary purports to act contains directions for the voting  
1586 of membership interests in any corporation, or for the execution and delivery of proxies for the voting  
1587 thereof, such directions shall be binding upon the fiduciary and upon the corporation if a copy thereof  
1588 has been furnished to the corporation.

1589 D. The corporation is entitled to reject a vote, *ballot*, consent, waiver, or proxy appointment if the  
1590 secretary or other officer or agent authorized to ~~tabulate~~ *count* votes, acting in good faith, has reasonable  
1591 basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the  
1592 member.

1593 E. ~~The~~ *Neither the corporation and its officer or agent nor the person authorized to count votes,*  
1594 *including an inspector under § 13.1-847.1, who accepts or rejects a vote, ballot, consent, waiver, or*  
1595 *proxy appointment in good faith and in accordance with the standards of this section or subsection B of*  
1596 *§ 13.1-847 are not is liable in damages to the member for the consequences of the acceptance or*  
1597 *rejection.*

1598 F. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy  
1599 appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

1600 **§ 13.1-852.1. Member or director agreements.**

1601 A. An agreement among the members or the directors of a corporation that complies with this  
1602 section is effective among the members or directors and the corporation, even though it is inconsistent  
1603 with one or more other provisions of this chapter in that it:

1604 1. Eliminates the board of directors or, subject to the requirements of subsection A of § 13.1-872,  
1605 one or more officers, or restricts the discretion or powers of the board of directors or any one or more  
1606 officers;

1607 2. Establishes who shall be directors or officers of the corporation, or their terms of office or manner  
1608 of selection or removal;

1609 3. Governs, in general or in regard to specific matters, the exercise or division of voting power by or  
1610 between the members and directors or by or among any of them, including use of weighted voting rights  
1611 or director proxies;

1612 4. Establishes the terms and conditions of any agreement for the transfer or use of property or the  
1613 provision of services between the corporation and any member, director, officer or employee of the  
1614 corporation, or among any of them;

1615 5. Transfers to one or more members, directors or other persons all or part of the authority to  
1616 exercise the corporate powers or to manage the business and affairs of the corporation, including the  
1617 resolution of any issue about which there exists a deadlock among directors or members;

1618 6. Requires dissolution of the corporation at the request of one or more of the members, or directors,  
1619 in the case of a corporation that has no members or in which the members have no voting rights, or  
1620 upon the occurrence of a specified event or contingency; or

1621 7. Otherwise governs the exercise of the corporate powers or the management of the business and  
1622 affairs of the corporation or the relationship among the members, the directors and the corporation, or  
1623 among any of them, and is not contrary to public policy.

1624 B. An agreement authorized by this section shall be:

1625 1. a. Set forth in the articles of incorporation or bylaws and approved by all persons who are  
1626 members or, if there are no members or the corporation's members do not have voting rights, by all  
1627 persons who are directors at the time of the agreement; or

1628 b. Set forth in a written agreement that is signed by all persons who are members or, if there are no  
1629 members or the corporation's members do not have voting rights, by all persons who are directors at the  
1630 time of the agreement;

1631 2. Subject to amendment only by all persons who are members or, if ~~there are no members~~ or the  
1632 corporation's members do not have voting rights, by all persons who are directors at the time of the  
1633 amendment, unless the agreement provides otherwise; and

1634 3. Valid for an unlimited duration, if the agreement is set forth in the articles of incorporation or  
1635 bylaws, unless the agreement shall be otherwise amended by the members or the directors, as the case  
1636 may be; or ~~valid for 10 years~~, if the agreement is set forth in a written agreement, *as set forth in the*  
1637 *agreement except that the duration of an agreement that became effective prior to July 1, 2015, remains*  
1638 *10 years unless the agreement provides provided otherwise or is subsequently amended to provide*  
1639 *otherwise.*

1640 C. The existence of an agreement authorized by this section shall be noted conspicuously on the  
1641 front or back of each certificate evidencing membership, if any. The failure to note the existence of the  
1642 agreement on the certificate shall not affect the validity of the agreement or any action taken pursuant to

1643 it.

1644 D. An agreement authorized by this section shall cease to be effective when the corporation has more  
1645 than 300 members of record. If the agreement ceases to be effective for any reason, the board of  
1646 directors may, if the agreement is contained or referred to in the corporation's articles of incorporation  
1647 or bylaws, adopt an amendment to the articles of incorporation or bylaws, without member action, to  
1648 delete the agreement and any references to it.

1649 E. An agreement authorized by this section that limits the discretion or powers of the board of  
1650 directors shall relieve the directors of, and impose upon the person or persons in whom such discretion  
1651 or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the  
1652 discretion or powers of the directors are limited by the agreement.

1653 F. The existence or performance of an agreement authorized by this section shall not be a ground for  
1654 imposing personal liability on any member for the acts or debts of the corporation even if the agreement  
1655 or its performance treats the corporation as if it were a partnership or results in a failure to observe the  
1656 corporate formalities otherwise applicable to the matters governed by the agreement.

1657 G. Incorporators or subscribers for membership interests may act as members or directors with  
1658 respect to an agreement authorized by this section if no members have been elected or appointed or, in  
1659 the case of a corporation that has no members, no directors are elected or holding office when the  
1660 agreement was made.

1661 H. No action taken pursuant to this section shall change any requirement to file articles or other  
1662 documents with the Commission or affect the rights of any creditors or other third parties.

1663 *I. An agreement among the members or the directors of a corporation that is consistent with the*  
1664 *other provisions of this chapter that does not comply with the provisions of this section shall nonetheless*  
1665 *be effective among the members, the directors, and the corporation.*

1666 **§ 13.1-865. Action without meeting of board of directors.**

1667 A. Except to the extent that the articles of incorporation or bylaws require that action by the board of  
1668 directors be taken at a meeting, action required or permitted by this ~~Aet~~ *chapter* to be taken by the  
1669 board of directors may be taken without a meeting if each director signs a consent describing the action  
1670 to be taken and delivers it to the corporation.

1671 B. Action taken under this section is effective when the last director signs the consent, unless the  
1672 consent specifies a different effective date, in which event the action taken is effective as of the date  
1673 specified therein provided the consent states the date of execution by each director.

1674 C. A director's consent may be withdrawn by a revocation signed by the director and delivered to the  
1675 corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

1676 D. *Any person, whether or not then a director, may provide that a consent to action as a director*  
1677 *shall be effective at a future time, including the time when an event occurs, but such future time shall*  
1678 *not be more than 60 days after such provision is made. Any such consent shall be deemed to have been*  
1679 *made for purposes of this section at the future time so specified for the consent to be effective, provided*  
1680 *that (i) the person is a director at such future time and (ii) the person did not revoke the consent prior*  
1681 *to such future time. Any such consent may be revoked, in the manner provided in subsection C, prior to*  
1682 *its becoming effective.*

1683 E. For purposes of this section, a written consent and the signing thereof may be accomplished by  
1684 one or more electronic transmissions.

1685 ~~E.~~ F. A consent signed under this section has the effect of action taken at a meeting of the board of  
1686 directors and may be described as such in any document.

1687 **§ 13.1-878. Advance for expenses.**

1688 A. A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a  
1689 party to a proceeding in advance of final disposition of the proceeding if:

1690 ~~1. The director furnishes the corporation a signed written statement of his good faith belief that he~~  
1691 ~~has met the standard of conduct described in § 13.1-876;~~

1692 ~~2. The~~ the director furnishes the corporation a signed written undertaking, executed personally or on  
1693 his behalf, to repay any funds advanced if he is not entitled to mandatory indemnification under  
1694 § 13.1-877 and it is ultimately determined under § 13.1-879.1 or 13.1-880 that he has not met the  
1695 relevant standard of conduct.

1696 B. The undertaking required by ~~subdivision~~ *subsection A 2* shall be an unlimited general obligation  
1697 of the director but need not be secured and may be accepted without reference to financial ability to  
1698 make repayment.

1699 C. Authorizations of payments under this section shall be made by:

1700 1. The board of directors:

1701 a. If there are two or more disinterested directors, by a majority vote of all the disinterested directors,  
1702 a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a  
1703 committee of two or more disinterested directors appointed by such a vote; or

1704 b. If there are fewer than two disinterested directors, by the vote necessary for action by the board in  
 1705 accordance with subsection C of § 13.1-868, in which authorization directors who do not qualify as  
 1706 disinterested directors may participate; or

1707 2. The members, but any membership interest under the control of a director who at the time does  
 1708 not qualify as a disinterested director may not be voted on the authorization.

1709 **§ 13.1-894. Merger.**

1710 A. One or more domestic corporations may merge with one or more domestic or foreign corporations  
 1711 or eligible entities pursuant to a plan of merger, or two or more foreign corporations or domestic or  
 1712 foreign eligible entities may merge into a new domestic corporation to be created in the merger in the  
 1713 manner provided in this ~~Aet~~ *chapter*. When a domestic corporation is the survivor of a merger with a  
 1714 domestic stock corporation, it may become, pursuant to subdivision C 5, a domestic stock corporation,  
 1715 provided that the only parties to the merger are domestic corporations and domestic stock corporations.

1716 B. A foreign corporation or a foreign eligible entity may be a party to a merger with a domestic  
 1717 corporation or may be created pursuant to the terms of the plan of merger only if the merger is  
 1718 permitted by the laws under which the foreign corporation or eligible entity is organized or by which it  
 1719 is governed.

1720 C. The plan of merger shall include:

1721 1. The name of each domestic or foreign corporation or eligible entity that will merge and the name  
 1722 of the domestic or foreign corporation or eligible entity that will be the survivor of the merger;

1723 2. The terms and conditions of the merger;

1724 3. The manner and basis of converting the membership interests of each merging domestic or foreign  
 1725 corporation and eligible interests of each domestic or foreign eligible entity into membership interests,  
 1726 eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests  
 1727 or other securities, cash or other property, or any combination of the foregoing;

1728 4. The manner and basis of converting any rights to acquire the membership interests of each  
 1729 merging domestic or foreign corporation and eligible interests of each merging domestic or foreign  
 1730 eligible entity into membership interests, eligible interests or other securities, obligations, rights to  
 1731 acquire membership interests, eligible interests or other securities, cash or other property, or any  
 1732 combination of the foregoing;

1733 5. The articles of incorporation of any domestic or foreign corporation or stock corporation or the  
 1734 organic document of any domestic or foreign unincorporated entity to be created by the merger or, if a  
 1735 new domestic or foreign corporation or stock corporation or unincorporated entity is not to be created by  
 1736 the merger, any amendments to the survivor's articles of incorporation or organic document; and

1737 6. Any other provisions required by the laws under which any party to the merger is organized or by  
 1738 which it is governed or required by the articles of incorporation or organic document of any such party.

1739 D. Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the  
 1740 plan in accordance with subsection L of § 13.1-804.

1741 E. The plan of merger may also include a provision that the plan may be amended prior to the  
 1742 effective date of the certificate of merger, but if the members of a domestic corporation that is a party  
 1743 to the merger are required ~~or permitted~~ *by any provision of this chapter* to vote on the plan, the plan  
 1744 ~~must provide that, may not be amended~~ *subsequent to approval of the plan by such members, the plan*  
 1745 ~~may not be amended~~ *to change any of the following unless such amendment is approved by the*  
 1746 *members:*

1747 1. The amount or kind of membership interests, eligible interests or other securities, obligations,  
 1748 rights to acquire membership interests, eligible interests or other securities, cash, or other property to be  
 1749 received under the plan by the members of or owners of eligible interests in any party to the merger;

1750 2. The articles of incorporation of any domestic or foreign corporation or stock corporation or the  
 1751 organic document of any unincorporated entity that will survive or be created as a result of the merger,  
 1752 except for changes permitted by subsection B of § 13.1-885; or

1753 3. Any of the other terms or conditions of the plan if the change would adversely affect such  
 1754 members in any material respect.

1755 **§ 13.1-895. Action on plan of merger.**

1756 A. In the case of a domestic corporation that is a party to a merger, where the members of any  
 1757 merging corporation have voting rights the plan of merger shall be adopted by the board of directors.  
 1758 Except as provided in subsection F, after adopting a plan of merger, the board of directors shall submit  
 1759 the plan to the members for their approval.

1760 The board of directors shall also transmit to the members a recommendation that the members  
 1761 approve the plan, unless the board of directors makes a determination that because of conflicts of  
 1762 interest or other special circumstances it should not make such a recommendation, in which case the  
 1763 board of directors shall transmit to the members the basis for that determination.

1764 B. The board of directors may condition its submission of the plan of merger to the members on any



1765 basis.

1766 C. If the plan of merger is required to be approved by the members, and if the approval is to be  
 1767 given at a meeting, the corporation shall notify each member, whether or not entitled to vote, of the  
 1768 meeting of members at which the plan is to be submitted for approval. The notice shall state that the  
 1769 purpose, or one of the purposes, of the meeting is to consider the plan and contain or be accompanied  
 1770 by a copy or summary of the plan. If the corporation is to be merged into an existing domestic or  
 1771 foreign corporation or eligible entity and its members are to receive membership or other interests in the  
 1772 surviving corporation or eligible entity, the notice shall also include or be accompanied by a copy or  
 1773 summary of the articles of incorporation or organic document of that corporation or eligible entity. If the  
 1774 corporation is to be merged into a domestic or foreign corporation or eligible entity that is to be created  
 1775 pursuant to the merger and its members are to receive membership or other interests in the surviving  
 1776 corporation or eligible entity, the notice shall include or be accompanied by a copy or a summary of the  
 1777 articles of incorporation or organic document of the new domestic or foreign corporation or eligible  
 1778 entity.

1779 D. Unless the articles of incorporation or the board of directors acting pursuant to subsection B,  
 1780 requires a greater vote, the plan of merger to be authorized shall be approved by each voting group  
 1781 entitled to vote on the plan by more than two-thirds of all the votes cast by that voting group at a  
 1782 meeting at which a quorum of the voting group exists. The articles of incorporation may provide for a  
 1783 greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so  
 1784 long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting  
 1785 group entitled to vote on the transaction at a meeting at which a quorum of the voting group exists.

1786 E. Separate voting by voting groups is required:

1787 1. On a plan of merger by each class of members:

1788 a. Whose membership interests are to be converted under the plan of merger into membership  
 1789 interests in a different domestic or foreign corporation, or eligible interests or other securities,  
 1790 obligations, rights to acquire membership interests, eligible interests or other securities, cash, other  
 1791 property, or any combination of the foregoing; or

1792 b. Who would be entitled to vote as a separate group on a provision in the plan that, if contained in  
 1793 a proposed amendment to the articles of incorporation, would require action by separate voting groups  
 1794 under § 13.1-887.

1795 2. On a plan of merger, if the voting group is entitled under the articles of incorporation to vote as a  
 1796 voting group to approve a plan of merger.

1797 F. Unless the articles of incorporation otherwise provide, approval by the corporation's members of a  
 1798 plan of merger is not required if:

1799 1. The corporation will survive the merger;

1800 2. Except for amendments permitted by subsection B of § 13.1-885, its articles of incorporation will  
 1801 not be changed; and

1802 3. Each person who is a member of the corporation immediately before the effective ~~date~~ *time* of the  
 1803 merger will retain the same membership interest with identical designation, preferences, limitations, and  
 1804 rights immediately after the effective ~~date~~ *time* of the merger.

1805 G. Where any merging corporation has no members, or no members having voting rights, a plan of  
 1806 merger shall be adopted at a meeting of the board of directors of such corporation upon receiving the  
 1807 vote of a majority of the directors in office.

1808 H. If as a result of a merger one or more members of a domestic corporation would become subject  
 1809 to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the  
 1810 plan of merger shall require the execution by each member of a separate written consent to become  
 1811 subject to such owner liability.

1812 **§ 13.1-908.1. Other claims against dissolved corporation.**

1813 A. A dissolved corporation may also *(i) deliver notice of its dissolution to any known claimant with*  
 1814 *a liability or claim that pursuant to subsection D of § 13.1-908 is not treated as a claim for purposes of*  
 1815 *§ 13.1-908 and (ii) publish notice of its dissolution and one time in a newspaper of general circulation*  
 1816 *in the city or county where the dissolved corporation's principal office, or, if none in the*  
 1817 *Commonwealth, its registered office, is or was last located. The notice of dissolution shall request that*  
 1818 *persons with claims against the dissolved corporation present them in accordance with the notice.*

1819 B. The notice shall:

1820 1. ~~Be published one time in a newspaper of general circulation in the city or county where the~~  
 1821 ~~dissolved corporation's principal office, or, if none in the Commonwealth, its registered office, is or was~~  
 1822 ~~last located;~~

1823 2. Describe the information that is required to be included in a claim and provide a mailing address  
 1824 to which the claim may be sent; and

1825 3. 2. State that a claim against the dissolved corporation will be barred unless a proceeding to

1826 enforce the claim is commenced prior to the earlier of the expiration of any applicable statute of  
 1827 limitations or three years after the date of *delivery of notice to the claimant, or the date of publication*  
 1828 of the notice, *as appropriate*.

1829 C. If the dissolved corporation publishes a newspaper provides notice of its dissolution in accordance  
 1830 with ~~subsection B~~ *this section*, the claim of each of the following claimants is barred unless the claimant  
 1831 commences a proceeding to enforce the claim against the dissolved corporation prior to the earlier of the  
 1832 expiration of any applicable statute of limitations or three years after the ~~publication date of the~~  
 1833 ~~newspaper~~ *on which notice was delivered to the claimant or published, as appropriate*:

1834 1. A claimant who was not given written notice under § 13.1-908;

1835 2. A claimant whose claim was ~~sent in a timely manner~~ *sent* to the dissolved corporation but not  
 1836 acted on; and

1837 3. A claimant whose claim ~~does not meet the definition of a claim in~~ *pursuant to* subsection D of  
 1838 § 13.1-908 *is not treated as a claim for purposes of § 13.1-908*.

1839 D. A claim that is not barred by subsection C of § 13.1-908 or subsection C of this section may be  
 1840 enforced:

1841 1. Against the dissolved corporation, to the extent of its undistributed assets; or

1842 2. Except as provided in subsection D of § 13.1-908.2, if the assets have been distributed in  
 1843 liquidation, against a member of the dissolved corporation to the extent of the member's pro rata share  
 1844 of the claim or the corporate assets distributed to the member in liquidation, whichever is less, but a  
 1845 member's total liability for all claims under this section may not exceed the total amount of assets  
 1846 distributed to the member.